The Solicitors' Journal

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CURRENT TOPICS

Remedies against the Crown

THE urgent need of legislation to enable proceedings in contract and tort to be taken against the Crown, more especially in its capacity as employer, has been increasingly apparent during recent months as a consequence of the decisions of the House of Lords in *Adams* v. *Naylor* [1946] A.C. 543, and of the Court of Appeal in *Royster* v. *Cavey* (1946), 90 SOL. J. 584. Repeated demands have been voiced both in and out of Parliament for the early introduction of a Bill for this purpose, and as recently as 29th January the Chairman of The General Council of the Bar and the President of The Law Society, in a letter to *The Times*, urged the necessity of keeping this question prominently before the Government in the interests of elementary justice. So grave was the matter felt to be that VISCOUNT SIMON, who has been prominent among those demanding reform, stated on 4th February that he had taken the unusual step of introducing a Bill of his own, limited to the most pressing aspect of the problem, namely, where the Crown was the occupier of premises and a person sustained injury on them. All will therefore welcome the intimation on the same day by the Lord Chancellor in the House of Lords that he hoped to introduce a Bill, which he had good grounds for supposing would be non-controversial, in the course of this month. He indicated that the broad general principle would be that in all matters the courts should be open to anyone who had a claim against the Crown in the same way as they were to anyone who had a claim against an individual.

The Solicitors' War Memorial

THE appeal recently sent over the signatures of the President and the Vice-President of The Law Society and the Chairman and Honorary Secretary of the Associated Provincial Law Societies, to members of The Law Society, will, we are confident, be read with close attention, and will not go unheeded by those who have read it. It concerns something which is at present close to the hearts of all solicitors, the part played by them and their sons and daughters during the recent war, when, as the appeal states, there were 7,202 solicitors and 2,253 articled clerks in H.M. forces; over 70 per cent. received commissions, and 1,049 received awards for gallantry or were mentioned in despatches; 519 lost their lives. A high proportion of staff officers, of key men in Government Departments, of organisers of Civil Defence and of leaders in other forms of National Service were solicitors. A new memorial will record the names of those solicitors and articled clerks, whether in the fighting services or not, who lost their lives on active service or as a result of enemy action. In addition, a book giving a short history of each of them will form an integral part of the visible memorial. The main object of the appeal is to create a fund to help the families and dependents of the fallen and to assist those solicitors and articled clerks who have suffered in mind, body or estate by the war. The fund will be administered by the Council of The Law Society, who will seek the advice and help of the Solicitors' Benevolent Association where necessary in its administration. Any balance of the fund remaining after its objects have been met will be paid to the Solicitors' Benevolent Association. The target figure is only £20,000—less than £1 for every solicitor on the roll. A maximum donation of five guineas or an annual subscription of one guinea under covenant for seven years has been fixed.

Functions of Stipendiaries

A NOVEL proposal to extend the duties of stipendiary magistrates was made on behalf of the General Council of the Bar in a memorandum recently submitted to the Royal Commission on Justices of the Peace by Sir CYRIL RADCLIFFE, K.C., Mr. J. P. EDDY, K.C., and Mr. C. G. L. DU CANN. The recommendation was that stipendiary magistrates, each with an allotted circuit, should be appointed to preside over benches of lay justices on certain days. Each of the circuit stipendiary magistrates would also be available to take any case on his circuit which involved a question of law or which for any special reason should be dealt with by him. The bulk of the work would still be done by the lay justices, but they would have the benefit of the guidance of the stipendiary magistrate. The Bar Council took the view that the value of the suggestion depended entirely on the choice of stipendiary magistrates, who should be members of the Bar, with wide experience of court procedure. It also felt that there should be power to appoint stipendiary magistrates otherwise than on the application of the local authority, and that the Lord Chief Justice should be consulted on the suggested new appointments. The salary of the circuit stipendiary magistrate should be not less than £2,000 a year, and the scale of pensions should be similar to that set out in Pt. I of Sched. I to the County Courts Act, 1934. The Howard League, on the other hand, expressed the view in its memorandum that a stipendiary magistrate should be appointed only on a local authority's application. Two other points of importance in the Bar Council's memorandum were: (1) that political considerations should be entirely excluded in selecting justices, and (2) that payment of lay magistrates at the rate of a guinea a sitting or some other suitable rate should be made. These proposals of the Bar

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Council are a modification of suggestions previously made by others that stipendiary magistrates should wholly replace "the great unpaid," and it will be interesting to observe the reaction in official circles.

Witnessing and Wives

A QUANTITY of what may be called minor correspondence in *The Times* recently revolved around the interesting question whether the wife of a person executing a document may witness it, and if not, why not. LORD CALDECOTE, until lately Lord Chief Justice of England, started the ball rolling with a letter on 17th January asking if anyone could tell him why his wife was prevented by law from witnessing his signature of deeds? Was it a mere survival of the time when married women were under their husband's domination? If so, his lordship suggested, it might be repealed. This query produced a number of replies from solicitors and others anxious to make good the apparent gap in his lordship's knowledge of the law. Mr. C. JOHN WEBB gave the clear answer: "There is nothing in law to prevent a wife from attesting the execution of a deed by her husband, but by the practice of conveyancers she is not regarded as a satisfactory witness. The object of having a document attested (apart from the special cases where attestation is required by statute) is to establish its authenticity in legal proceedings. A wife not being a compellable witness in most criminal cases, some other person should attest her husband's signature." Mr. F. C. ANDERSON, solicitor, writing from the Town Clerk's Office, Hove, added that "the old bar was based on the rule which existed before the Evidence Acts, 1851, 1853, and 1869, that parties to an action and their spouses were not competent to give evidence in that action." Mr. H. H. RYLAND wrote that "a wife is a perfectly competent witness to the execution of a deed, except in the case of transfers and other deeds relating to Government stocks and some other special documents." Finally, LORD MANVERS wrote that important documents like wills and deeds should be witnessed, but asked: "Is there not an enormous amount of time wasted every day in witnessing signatures to share transfers, etc.? The witnesses could in many cases never be found. Even if found, their recollection is unlikely to be precise enough to make their evidence of any value." LORD CALDECOTE's final reply on 24th January seems to indicate that the apparent ignorance of his initial letter was artfully assumed in order to draw attention to a real criticism of the conduct of certain public affairs. He wrote: "Lord Manvers states my opinion so exactly that I need hardly do more than quote a printed form from the Brixton branch of a bank, in which the following sentence occurs signed by the manager: "A wife is not a competent witness to her husband's signature, nor a husband to his wife's."

Language of Orders

IN language which no one can suggest was too strong, the Lord Chief Justice castigated those responsible for the drafting of orders and regulations such as the Eggs (Control and Prices) (Great Britain) Order, 1944, as amended by S.R. & O., 1945, No. 645, which was before him in an appeal against a conviction on 22nd January. The offence in question concerned a sale of eggs for hatching by a man controlling twenty-five or fewer head of poultry. LORD GODDARD described the order as being couched in language "which no human being can understand." He added: "I am not prepared ever to support orders and find people guilty of criminal offences when the orders are couched in language open to all sorts of meanings and cause all sorts of difficulties so that unfortunate people cannot know whether they are acting legally or not unless they take counsel's opinion or, at any rate, get a solicitor's advice . . . These orders have got to be understood by cottagers and miners who keep a few backyard hens . . . This seems to be an order which provides argument for the junior counsel to the Treasury and another counsel, and which certainly is not clear to the two Judges of the High Court sitting to consider it. Yet it is an order creating criminal offences . . . If orders are made creating criminal offences they should be stated in language which humble people like cottagers and miners, who may commit the offences, can understand . . . It is a very serious thing to produce orders and so forth, whether under the Defence Regulations or anything else, creating offences when they are couched in language which does not make it clear whether a person is committing an offence or not." Serious indeed it is. The creation of laws which the courts cannot operate inevitably brings law itself into disrepute and puts back the hands of progress. It is an intolerable state of affairs, and everyone concerned in the framing of our laws has now been warned.

Use of Pedestrian Crossings

THE motoring correspondent of *The Times* wrote, in the course of a letter to that newspaper of 17th January, that the failure of pedestrians to use pedestrian crossings was the outstanding impression he received during a recent ride in a police patrol car in the West End. One woman, when asked to use a pedestrian crossing 20 yards from where she was standing, "waved the policeman aside with contempt and plunged into the traffic, leaving her fate more to the skill of drivers than to her own judgment—or agility." Whatever one's opinions may be of pedestrians who fail or refuse to use pedestrian crossings, the fact remains that walking to the common danger is not a crime, although it may entail some civil liability. Nor is failure to use a pedestrian crossing an offence—not yet, at any rate. On the other hand, cases in which motorists have been held civilly responsible for injuries and loss to pedestrians far outnumber the cases in which the roles are reversed. Moreover, many pedestrians feel that they have not merely to give the wide latitude allowed to drivers at crossings in *Chisholm* v. *L.P.T.B.* (1938), 82 SOL. J. 1050, i.e., not to step on to the crossing once a vehicle is within 50 to 70 yards of it, but actually to wait until no vehicle is in sight at all before daring to cross, so widespread is the defiance of the pedestrian-crossing regulations on the part of motorists. Motorists who complain of lack of co-operation on the part of pedestrians should bear in mind that they, the motorists, are the persons in charge of lethal machines, and it is to the proper and adequate control of their activities on the highway that the attention of the Legislature has to be directed whenever it has time and occasion to consider the tragic toll of casualties on the roads.

Duties of an Omnibus Conductor

IT is always interesting to read judicial opinions on questions of fact or mixed fact and law, especially when on the answers to those questions depends the real issue of responsibility in the class of cases affected. The duties of a conductor on a public omnibus are the subject of regulations, but every conceivable case cannot be expressly covered, and useful regulations prescribe general duties without seeking to cover individual instances. In Eire, regulations made in 1937 under the Road Traffic Act, 1933, require of the conductor and driver that "each shall be in constant attendance on the omnibus which they operate" (r. 5 (3)) and that "each shall take all reasonable precautions to ensure the safety of passengers in or on entering or alighting from the vehicle" (r. 5 (4)). We acknowledge our indebtedness to the *Irish Law Times and Solicitors' Journal* of 11th January for a report of *Garda Walsh* v. *Hugh Loughlin* (1st November, 1946). The case concerned summonses under the regulation mentioned above against a conductor whose omnibus had reached its destination, but the driver was in his seat ready to start again, and a child playing on the platform rang the bell and started the bus while the conductor was in the street writing out his waybill. Having dealt with the meaning of "constant attendance" in the case of a driver, District Justice MOLONY said that it was not so simple in the case of a conductor. He asked whether the conductor must never leave the bus for a single instant, or must he have under his view all the time all the bus. The learned justice found the phrase

"constant attendance" too vague to permit of a court interpreting it sufficiently, so as to bind any particular conductor on any particular occasion, but convicted the defendant under sub-r. (4).

Extensions of Time

IN contrast to the stringencies and controls of the war-time and the post-war periods, there have been some relaxations of the usual rigidities of procedure. One of these was contained in a measure affecting local authorities and public utility undertakings, the Special Enactments (Extension of Time) Act, 1940. The Act provides that where, by or by virtue of provisions regulating the discharge of a duty or the exercise of a power to which it applies, a time is limited or a date is fixed within or at which the duty is to be discharged, or the power may be exercised, or an exercise of the power is to take effect, the appropriate Minister may make an order extending the time as so limited by any period of not more than three years, provided that the application is made during "the period of the present emergency." The powers and duties to which the Act applies are any duty imposed or power conferred by a local or private Act, an order confirmed by an Act, or an order of a local or private nature made under an Act, and any power to purchase, or power of re-entry exercisable in relation to, a public utility undertaking, or part of such undertaking. The Act does not apply to a duty imposed or a power conferred by an Act passed, or an order made, after the passing of the general Act, on the 25th April, 1940, unless the contrary intention appears in the Act or order which imposes the duty or confers the power. An application for an order must be made before the expiration of the time within which, or the date at which, the duty or power to which the application relates is to be discharged or exercised, but may not be made more than three years before the expiration of that time or before that date, as the case may be. In Circular 2/47, issued on 13th January by the Ministry of Health to local authorities and some public utility undertakings, it is stated that the Government, having examined the question whether "the period of the present emergency" for the purposes of the Act should be brought to an end in the near future, have found it undesirable that the powers of the Act, which can be exercised only where requisite or expedient by reason of any circumstances directly or indirectly attributable to war, should continue to be available for any long period after the end of actual warfare, and have decided that the said period should end with the 30th June, 1947. An Order in Council to give effect to the decision will be made at the appropriate time. The appropriate Minister, being the Minister of the Crown in charge of the government department concerned with the purposes for which the duty is imposed or the power conferred, will be prepared, until the 30th June, 1947, to entertain an application for an order under the Act in relation to a duty or power the time for the discharge or exercise of which will expire at a date not more than three years after the date of the application, but not in any case later than the 30th June, 1950. Orders already made and those to be made under the Act will not be affected by the termination of the emergency period.

Recent Decision

In *Knowler* v. *Rennison*, on 31st January (p. 85 of this issue), a Divisional Court (the LORD CHIEF JUSTICE, HUMPHREYS and LEWIS, JJ.) allowed an appeal by the prosecution from a decision of quarter sessions removing a disqualification for holding a licence to drive a motor vehicle imposed by petty sessions for a contravention of s. 35 of the Road Traffic Act, 1930, by causing a motor-cycle to be used on a road without there being in force in respect of that user of the machine a policy of insurance complying with the Act. The court held that neither the fact that a defendant misapprehended the legal effect of his policy, nor the fact that he honestly believed that a friend whom he allowed to use his vehicle had a policy in force, nor the fact that he was unlikely to allow it to be driven again without satisfying himself that a proper policy was in force, was a special reason why disqualification should not be imposed, but the last-mentioned matter was one of those which had to be taken into account by the court in exercising its discretion. Hardship was not a special reason for refraining from imposing disqualification.

DEDUCTION OF TAX UNDER SCHEDULE D AT SOURCE—II

IN a previous article (90 SOL. J. 621) an endeavour was made to explain the principle upon which are to be distinguished, on the one hand, those annual payments from which the payer is entitled to deduct and retain tax under r. 19 of the General Rules scheduled to the Income Tax Act, 1918; and, on the other hand, those payments in respect of which, inasmuch as they are not payable out of the payer's taxed income, there is laid upon the payer by r. 21 the duty of deducting and paying over to the revenue the tax on them.

It must not be assumed, however, that all annual payments necessarily fall into one or other of the two categories named. The word "annual" indicates, in this connection, the quality of recurrence, or capability of recurrence (*per* Lord Maugham, in *Moss' Empires, Ltd.* v. *C.I.R.* [1937] A.C. 785, at p. 795, distinguishing the meaning of the same word as applied to the profits of a trade). But the case of *Re Hanbury, decd.* (1939), 20 A.T.C. 333, shows that a payment may be an annual one in this sense, as was (so the Court of Appeal assumed for the purposes of its judgment) the sum ordered by the Chancery Division in that case to be paid to an executor in respect of the use by other parties to the action of certain chattels in connection with colliery premises; it may be taxable, in the broad sense that it will ultimately attract tax; but unless it falls within the language of either r. 19 or r. 21, there will be no right (r. 19) or duty (r. 21) to deduct tax in making the payment. Sir Wilfrid Greene, M.R., as he then was, refers in his judgment to the remarks of Scrutton, L.J., in *Earl Howe* v. *C.I.R.* [1919] 2 K.B. 336, at p. 352, and it is evident that it is from that well-known authority that the Master of the Rolls derives the class of annual payments, "the very nature and quality of which," he says (20 A.T.C., at p. 335), "make it impossible to treat them as part of the pure profit income of the recipient"; they are merely an element to be taken into account in the computation of profits. In other words, like the yearly payment which a man might make to a garage proprietor for the hire and upkeep of a car in one of the examples imagined by Scrutton, L.J., these payments do not, as such, become taxable income in the hands of the recipient. It follows that tax is not deductible even though they are annual payments within Lord Maugham's definition (*supra*).

Putting it in another way, the Master of the Rolls calls attention to a readier test by which the deductibility of Sched. D tax may be gauged in most instances. Rules 19 and 21 are not charging provisions. The charge to tax in cases where they apply is imposed by Case III. Case VI also covers certain annual sums, but a payment within Case III cannot also come within Case VI, which is simply a sweeping-up case. Thus the terms of the particular charging provision give the key to the question of deduction.

It may, perhaps, be pointed out respectfully that this view of the matter is not entirely comprehensive, since patent royalties may be assessable under Case VI, but deduction of tax from them is specifically provided for by rr. 19 (2) and 21 (1); while certain other forms of income are virtually deemed for income tax purposes, including deduction of tax at source, to be patent royalties (see, e.g., Finance Act, 1934, s. 21, rents of land and easements used in connection

with quarries, mines, etc.; and—an example enacted since the Master of the Rolls' judgment—excess rents under long leases: Finance Act, 1940, s. 17).

Assuming, then, an annual payment of the kind that is affected by either r. 19 or r. 21, we next have to apply the principle discussed in the previous article. This, as we have seen, involves the consideration of an element quite apart from the payment itself—the particular fund out of which it is payable. As regards the nature of this fund we are not, of course, confined to Case III or indeed to Sched. D. An annual payment may be paid out of income covered by any Schedule, or it may not be paid out of income at all.

Whether a payment is or is not payable out of profits and gains brought into charge to tax is naturally to some extent a question of fact. What must be a comparatively common instance is exemplified in the *Moss' Empires* case (*supra*), where sums which were held to be annual payments had been allowed as a deduction in the computation of the profits upon which tax was levied on the payer. The Court of Session decided, and it seems to have been admitted before the House of Lords, that the effect of this was that it could not be said that the sums were payable out of taxed income, since they had been deducted before ascertainment of the sum on which tax had been charged. Rule 21 was therefore applicable.

There are, of course, mixed cases, where a sum is payable partly but not wholly out of taxed profits. These fall under r. 21 by the terms of that rule, but there is an amelioration in the wording of subs. (2) as amended, the effect of which is that the return and assessment prescribed apply only to so much of the payment as is not actually *made* out of taxed profits. Tax on the balance may be retained by the payer, who thus avoids double taxation on the same income.

But fact, in this as in other matters, is to be interpreted in accordance with certain principles of law. In the first place, to secure the benefit of r. 19, the taxed profits out of which the payment is made must, according to *Luipaard's Vlei Estate, etc., Co., Ltd.* v. *C.I.R.* [1930] 1 K.B 593, be the profits of the particular year in which the payments fall due. Even so, there are two possible interpretations of the phrase "profits and gains" as applied to a given year. Owing to the basis of assessment of certain types of income, income actually earned in year A is often not assessable on the recipient until year A *plus one*. Hence a taxpayer may be said to have both "actual" and "statutory" profits for a particular year. To which of these two things do the rules refer? This is the difficulty reserved by Viscount Simon when making his resumé of the general situation as regards deduction in *Allchin* v. *Coulthard* [1943] A.C. 607, at p. 619.

The question appeared to some to be answered by the decision of the Court of Appeal in *A.-G.* v. *Metropolitan Water Board* [1928] 1 K.B. 833, in favour of the view which regarded the rules as referring to the statutory profits as opposed to the actual amount earned in a given year. But this decision has several times been treated as restricted to its own facts, and in *Allchin* v. *Coulthard, supra*, Viscount Simon settles the controversy to which he had been an active party as counsel in 1928 by approving the result of the *Water Board* case while holding that the reasoning adopted by the Court of Appeal in arriving at that result calls for correction. Lord Romer, in the same case, does not find it necessary to express an opinion on the point. The problem is described by Lord Macmillan as an illogical one incapable of a logical solution. As he says, "a real payment cannot be made out of notional profits."

Viscount Simon's final solution is put by him thus ([1943] A.C., at p. 622): "Annual payments paid in a particular year, which, if the profits or gains brought into charge for that year were large enough, would have been properly payable thereout, are to be treated as having notionally been paid out of the payer's assessed income for that year, and the payer is to be allowed to deduct and retain the tax on the annual payments, provided that the amount so deducted and retained does not exceed the amount of tax payable by him in that year on his assessed income. Any such excess he may not retain, but he must account for it to the Crown."

Many readers may prefer to study a numerical example. Here is one based on an illustration used by Viscount Simon:—

Year	(1) Interest, &c., paid.	(2) Actual income assessable, say, Case I.	(3) Case I Assessment.	(4) Tax retained on the lesser of Cols. (1) and (3) (r. 19).	(5) R. 21 assessment on excess of col. (1) over col. (3).
	£	£	£	£	£
A – 1	—	(800)	—	—	—
A	900	1,000	800	800	100
A+1	900	(600)	1,000	900	—

It is assumed that there is no illegality in the payment of the interest or annual payment out of the actual income on which the assessments in column (3) are raised. This is implicit in the expression "payable out of profits, etc." (*Sugden* v. *Leeds Corporation* [1914] A.C. 483; see, however, as to that case, Finance (No. 2) Act, 1945, s. 21); though whether the payment is in fact so made in the first instance is immaterial. This last proposition has been settled law since *Edinburgh Life, &c.* v. *Lord Advocate* [1910] A.C. 143. Lord Greene, M.R., re-states it in an interesting passage in his judgment in *Allchin's* case [1942] 2 K.B. 228, at pp. 234–5, a passage adopted by Viscount Simon in the House of Lords. Here the distinction is neatly drawn between the two senses in which the phrase "payment out of a fund" is used—the realistic sense in which the word "fund" denotes, e.g., money in a drawer or at a bank, and the more artificial use of the phrase as describing an operation of accountancy.

Nevertheless, it may have to be considered whether the payer of an annual sum is precluded from treating that sum as being payable out of taxed income, e.g., where a company, by debiting interest to capital, freed income for distribution purposes (*Central London Railway Co.* v. *C.I.R.* [1937] A.C. 77; see also *Corporation of Birmingham* v. *C.I.R.* [1930] A.C. 307; but both these cases are described by Lord Greene as turning on very special facts).

DIVORCE LAW AND PRACTICE

It is intended in this issue to refer to certain decisions in so far as they affect the matrimonial jurisdiction of (*a*) the justices, and (*b*) the High Court.

(*a*) *The Justices: Duty to state reasons.* Once again the Divisional Court has had occasion to refer to the duty which rests upon the justices' clerk to give to the court, in the event of an appeal, a statement by the justices of the reasons for their decision. In *Sullivan* v. *Sullivan* (1947), 91 Sol. J. 28, an appeal by a wife from the dismissal by the justices of two summonses which had been brought by her alleging neglect to maintain and desertion, no reasons were given by the justices in court for their decision, and the solicitors for the wife, who had given notice of appeal, were informed by the justices' clerk that no reasons had been given; but he said that he thought it "clear from the evidence what their reason was." In sending the case back for rehearing Lord Merriman, P., reiterated that the court had insisted repeatedly for many years that it was the duty of justices' clerks not merely to take a proper note of the evidence, but also, in the event of an appeal, to give to the Divisional Court a statement of the reasons for the justices' decisions. He stated that the justices were entitled to make, or refuse to make, an order without giving reasons at the time of the decision, but a proper statement of the reasons for their decision was necessary in the event of an appeal, and he went on to say that, if, after the present warning, the court were again treated in such a way, it might have to consider what powers it had to ensure that parties were not put to unnecessary expense through such a dereliction of their duties by clerks to justices.

Following upon these observations, an interesting letter appeared in the *Justice of the Peace and Local Government Review* (vol. 110, p. 581) from the President of the Justices' Clerks Society, in which he referred to the invidious position in which justices' clerks were thus placed. He pointed out that they are the servants of their justices and cannot give them orders, and that there is no statute requiring justices to give to the Divisional Court their reasons for their decisions, although he agreed that r. 67 (3) of the Matrimonial Causes Rules, 1937 (now r. 68 (3) of the 1944 Rules), which provides for the lodgment at the same time as the appeal of (*inter alia*) two copies of the reasons of the justices for their decision, does place this obligation on them. With regard to the position arising where justices declined to state their reasons, he then stated that the clerk may only do one of two things, namely (*a*) he can say that his justices will not state the reasons for their decision, or (*b*) he can give what he surmises to be their reasons. If he adopts course (*a*) it seemed that he is, in the President's view, guilty of "dereliction of duty" as justices' clerk; if course (*b*) his surmise may be entirely wrong and he will incur the censure of his own justices, and rightly so. It may be noted that a footnote to this letter under the hand of the editor states that in their opinion a clerk would not be censured by the court if, after making every possible effort to induce the justices to state their reasons, he had to report a point-blank refusal by the justices to do so, a view agreed with by the writer of the letter.

There the matter must now be left, but in view of the terms of this latest warning by the President as to the necessity for compliance by justices' clerks with the requirements in this respect it is to be hoped that a similar position will not arise in the future.

With regard to the right of parties to ask for the reasons for the justices' decision in open court, reference may be made to the remarks of the President in *Angel* v. *Angel* [1946] 2 All E.R. 635. In that case, an appeal by a wife from the dismissal by the justices of her summons for desertion, it appeared that the case for the wife had been stopped by the justices, who did not call upon counsel for the husband (though in fact the latter was not proposing to make a submission of no case, but was about to put his client into the witness-box), and no reason was stated by the justices for so doing. On this point the President says: "That, of course, is quite in order, though, no doubt, if the advocate on either side had asked for a statement of the reasons then and there, the justices might have felt inclined to give them, but justices are not bound to give reasons for decisions, as judges are, and it is only if an appeal results that they are obliged to do so. Accordingly, when this appeal was made, the justices were asked for, and gave, their reasons . . ."

(*b*) *The High Court: Revival of Condoned Offence.* A somewhat unusual point arose in *Lloyd* v. *Lloyd and Hill* (1947), *The Times*, 17th January, which concerned the question as to the effect of revival by subsequent desertion on the part of a wife upon an act of adultery committed by her, so as to give rise to the right on the part of the husband to claim damages from the co-respondent where an offer to return had been made by the wife after the desertion had taken place.

The facts shortly were that on 24th November, 1945, the husband had petitioned for divorce on the ground of adultery with the co-respondent, but upon the husband and wife subsequently resuming cohabitation the petition was dismissed. On 11th January, 1946, the wife deserted the husband, who on 17th January, 1946, filed a petition for dissolution, contending that by reason of the desertion the condoned adultery had been revived, although it had been stated that the wife had made an offer to return. In granting a decree and awarding damages against the co-respondent, Hodson, J., held that, though the wife had remained away only for a few days, she could not cancel the revival of her adultery by making a subsequent offer to return. The condoned adultery had been revived by her desertion, and the co-respondent could not obtain the benefit of the condonation when the wife lost it by her desertion. If condonation went, it went for all purposes.

By reason of the fact that this case has not yet reached the stage of a full report and no statement of the arguments is at present to hand, it is not possible to discuss the judgment fully, but in view of the importance of the doctrine of the revival of a matrimonial offence by subsequent desertion it may be helpful here to state the present position in the light of the decided cases.

The question as to the duration of the period of continuous desertion necessary in order to revive an act of adultery was much canvassed in recent decisions of courts of first instance until it had been set at rest by the majority judgment in the Court of Appeal in *Beard* v. *Beard* [1946] P. 8. The two opposing views may be shortly stated thus: (i) Is the rule of revival brought into operation by any matrimonial misconduct subsequently committed which is sufficiently serious to be taken cognisance of by the Divorce Court as misconduct? or (ii) Does it only become operative by such misconduct as would of itself justify the court in granting a decree based upon such misconduct alone? In support of (i), in *Higgins* v. *Higgins and Bannister* [1943] P. 58 it was held by Pilcher, J., that desertion independently of its duration revived condoned adultery, while the view expressed in (ii), above, was upheld in two cases, firstly by Barnard, J., in *Ainley* v. *Ainley* [1945] P. 27, which was afterwards reversed as a result of the appeal in *Beard's* case (see 62 T.L.R. 320), and secondly by Hodson, J., in the court below in *Beard's* case, both of whom came to the conclusion that in order to revive condoned adultery it was necessary that the subsequent desertion must be for a period of at least three years immediately preceding the presentation of the petition, that is to say, the same duration of desertion as it is necessary to establish if a decree were sought on this ground.

In the Court of Appeal the whole basis upon which the doctrine of the revival of a condoned offence rests was looked at, and after a full consideration of all the relevant authorities a majority of the court (Scott and Lawrence, L.JJ.) came to the conclusion that condonation is conditional upon no matrimonial offence being committed in the future, and it is not an absolute and final act which admits of no revival by subsequent misconduct. Upon this basis they held that the view expressed in (i), above, by Pilcher, J., was correct and that subsequent misconduct which is sufficient to revive the condoned offence must be, in the words of Scott, L.J., ". . . conduct which in the eye of that court [the Divorce Court] is wrong, whether it does or does not reach the duration, or gravity, or completeness which is necessary to permit of a decree, provided always that it be sufficiently serious for the court to regard it as a substantial breach of duty." In his dissenting judgment, however, Vaisey, J., approaching the matter from, as it were, a more ecclesiastical angle, came to the conclusion that the essence of condonation in law is its finality and that, therefore, once an offence has been condoned, it is for this purpose as if it had never been committed, and it cannot be revived by a subsequent act of misconduct so as to convict the offender by its own force. On this view of the position it became therefore irrelevant for him to consider the question as to the duration of the subsequent desertion.

In view of the fact that there was no appeal to the House of Lords in the case of *Beard*, it may well be that the case of *Lloyd* will provide the opportunity of obtaining the opinion of the highest tribunal on this most important and far-reaching question, an opinion which, as Scott, L.J., himself pointed out, would be welcome. It may be noted in this connection that the King's Proctor was represented in *Beard's* case, both before Hodson, J., and in the Court of Appeal, and the failure to have the matter carried further in such circumstances by reason of the petition, the subject of the appeal, being undefended and the appeal resulting in the prayer of the petition being granted, is a further example of the unfortunate position (referred to *ante*, p. 34) which arises where in a divorce matter there is only one party to an appeal.

COMPANY LAW AND PRACTICE

COMPANIES BILL—VIII

PROVISIONS RELATING TO WINDING-UP

PART V of the Bill contains the proposed amendments to the provisions of the existing law applicable to winding-up. The changes are of a miscellaneous character, and while neither numerous nor complicated are of considerable importance. Two of the more important changes I can mention fairly briefly, so I will start with them; they are both designed to improve the position of creditors in regard to questionable transactions. The first involves a simple change of s. 266 of the 1929 Act which, it will be remembered, is the section which avoids a floating charge created by an insolvent company within six months of liquidation, except so far as the consideration for the charge consists of cash paid to the company at or after the date of creation of the charge. Clause 82 of the Bill enlarges the period to twelve months, it having been observed that directors who have secured what the company owe them by a floating charge can usually manage to keep liquidation at bay for six months without overmuch difficulty. The second change enlarges the period relevant to fraudulent preferences: s. 265 of the 1929 Act provides in effect that any transaction by a company which would if carried out by an individual be a fraudulent preference in his bankruptcy shall, similarly, be a fraudulent preference in the liquidation of the company and invalid accordingly. Under the existing law any such transaction which took place more than three months before the winding up is not caught by the fraudulent preference provisions; this period cl. 81 of the Bill extends to six months, and provision is also made for a corresponding change in bankruptcy law (cl. 101). Clause 81 contains a further amendment relating to fraudulent preference, designed to improve the position of a creditor of the company whose debt the company paid off within the relevant period with a view to preferring a surety who had guaranteed the debt; thus, a director may have guaranteed the company's overdraft, and shortly before going into liquidation the company pays off the overdraft with a view to preferring the surety who would otherwise be called upon by the bank under his guarantee and would then have to rank with the other creditors of the company. Such a payment, though not made to prefer the bank, is none the less a fraudulent preference (see s. 14 of the Bankruptcy Act, 1914) and the bank can be called upon by the liquidator to refund the money. The surety may nevertheless have been discharged from his liability under the guarantee; and the Bill provides that in such a case the creditor who has had to refund the money to the liquidator shall be entitled to recover it from the surety. Again a corresponding amendment to the bankruptcy law is provided.

I now come to what may prove in its application to be the most interesting of the amendments introduced by the Bill to the winding-up law, and of great value to complaining minorities; though it remains to be seen whether the court in applying the new provisions (should they become law) will tend to make them of wide or narrow application. Among the grounds on which under the present law the court may make an order to wind up a company, is where it is of opinion that it is just and equitable that the company should be wound up; this, in terms, gives the court a wide discretionary power, but it is, I think, true to say that although each case is decided on its own facts, the jurisdiction to wind up on this ground is exercised within not very wide limits. Petitions where the "just and equitable" ground is the only one alleged are very commonly the culmination of disputes between two opposing camps of shareholders; and where the camps are of equal strength in the company, so that a deadlock has arisen in its management and affairs, the court usually considers it a case for the making of the order. On the other hand, where the conflicting factions are of unequal strength and there is no deadlock in the administration of the company's affairs, since the majority are in a position to take the necessary decisions, the court will not as a rule make a winding-up order on the petition of the minority where, as is usually the case, the minority is alleging oppression or fraud by the majority; the reason being that there are other remedies and proceedings open to the minority which can be pursued without putting the company into liquidation, the procedure in which was not intended to be utilised to determine questions of that nature. This is, no doubt, a very good reason, but often the result is that a minority, though having good ground for considering themselves oppressed, may prefer to give up the struggle rather than launch complicated and costly proceedings in which they may fail to establish oppression, much as the court may suspect the *bona fides* of the majority.

The Cohen Committee recommended that s. 168 of the 1929 Act should be amended so as to provide, in effect, that the court may wind up a company, if of opinion that it is just and equitable, "notwithstanding the existence of an alternative remedy available to the petitioner." The amendment made by cl. 79 of the Bill is both more elaborate and less perspicuous. On a contributory's petition presented on the "just and equitable" ground the court is to make a winding-up order if of opinion (*a*) that the petitioner is entitled to relief either by winding up or by some other means, and (*b*) that in the absence of any other remedy it would be just and equitable that the company be wound up; but, even if these two conditions are fulfilled, it is not to make the order if it is also of the opinion that some other remedy is available to the petitioner and that he is acting unreasonably in seeking to wind up the company instead of pursuing his other remedy. The provisions of the clause seem to amount to this, that if the court forms the opinion that a "just and equitable" order is appropriate, the fact that another remedy is open to the petitioner is not to prevent the making of the order unless the petitioner is acting unreasonably in trying to get the company wound up instead of having resort to his other remedy. The amendment should certainly make it easier for a minority complaining of oppression to challenge the majority who, as the law now stands, can impose their will to what is perhaps an undue degree; for, so long as their acts are formally valid, the onus of establishing *mala fides* is on the minority. Under the new provision it may be that the courts will consider it just and equitable to make a winding-up order although the evidence falls short of affirmatively establishing *mala fides*, and if so the possibility of a winding-up petition at the instance of the minority should act as a salutary check on any tendency of a majority to abuse its power.

Clause 83 contains some important changes relating to the declaration of solvency which s. 230 of the 1929 Act prescribes for a members' voluntary winding up. Under s. 230 the declaration is required to be made and filed before the date on which the notices of the meeting at which the winding-up resolution is to be proposed are sent out; but there is no obligation to convene the meeting within a specified time, and the declaration remains good though the company's financial position may have deteriorated before the resolution to wind up is passed. The Bill alters this and requires the declaration to be made within the five weeks preceding the resolution to wind up; it need no longer be made before the date on which the notices are sent out, but must be filed with the registrar before the date of the passing of the resolution. There is an entirely fresh requirement in that the declaration must embody a statement of the company's assets and liabilities as at the latest practicable date before the making of the declaration; and a new criminal offence is created where the directors make the declaration without having reasonable grounds for the opinion that the company will be able to pay its debts in full, the sting of which lies in the provision that if the debts are not paid in full in the liquidation it shall be

presumed until the contrary is shown that the directors did not have reasonable grounds for their opinion. The clause goes on to provide that if in a members' voluntary winding up the liquidator is at any time of the opinion that the company will not be able to pay its debts in full, he is to summon a meeting of the creditors and lay before them a statement of the assets and liabilities of the company; and thereafter convene the annual and final meetings of creditors required in a creditors' winding up.

There are some amendments made with reference to preferential payments (cl. 80), and of these it may be noted that the maximum amount to which priority is to be given to a debt for wages or salary is increased to £100 in the case of both clerks or servants and workmen or labourers, and the period during which the services must have been rendered is made the same for both—viz., four months. Clauses 84 and 85 contain miscellaneous amendments relating to meetings in and information to be given in a winding up; cl. 88 makes changes in provisions of the 1929 Act for criminal and civil liability, the most important of which is that in addition to directors, other persons knowingly parties to the carrying on of the company's business in a fraudulent manner may also be made liable under s. 275 of the Act. It is also made an offence to bribe members or creditors to vote for or against the appointment of a particular liquidator.

The last clause of the Bill to which I want to refer is cl. 87. By s. 296 of the 1929 Act property vested in a company at the date of its dissolution and belonging to the company beneficially goes to the Crown as *bona vacantia*. Such property may well be onerous (e.g., leaseholds), and cl. 87 provides that the Crown may disclaim property so vesting in it, by a notice signed by the Treasury Solicitor; and if such disclaimer is made, the same results are to follow as in the case of disclaimer of onerous property by a liquidator (see s. 267 of the Act); consequently any person claiming an interest in the disclaimed property may apply to the court for an order vesting the property in him. The Crown's right to disclaim extends to any property, and it may be that if the provisions of cl. 87 become law, disclaimer may be made of property which is not onerous with a view to its becoming available for creditors or shareholders, who would then be able to apply to the court for a vesting order; at present, where the court does not object to the property of a dissolved company being made available for creditors or shareholders, it is necessary to have the company restored by an application to the court under s. 294 or s. 295 of the Act.

This article is the last of the series on the Companies Bill; for completeness sake I should mention that there are four other parts of the Bill (entitled respectively "Offences and Legal Proceedings," "Companies not registered under Principal Act," "Amendments of Acts, etc., other than Principal Act" and "General") which I do not think it would serve any very useful purpose to deal with. Some of the provisions in them I have mentioned when discussing other parts of the Bill; the rest are not, for the most part, of very general interest or importance, and any detailed mention of them would result in nothing more than a catalogue of disconnected items.

A CONVEYANCER'S DIARY

CONVEYANCE SUBJECT TO TENANCY

In connection with the "Diary" of the 21st December, 1946 (90 Sol. J. 624), a correspondent inquires how I reconcile the two subsections of s. 54 of the Law of Property Act. These subsections are as follows:—

> "(1) All interests in land created by parol and not put into writing and signed by the persons so creating the same, or by their agents thereunto lawfully authorised in writing, have, notwithstanding any consideration having been given for the same, the force and effect of interests at will only.
>
> (2) Nothing in the foregoing provisions of this Part of this Act shall affect the creation by parol of leases taking effect in possession for a term not exceeding three years (whether or not the lessee is given power to extend the term) at the best rent which can be reasonably obtained without taking a fine."

I do not feel that there is any real doubt as to the meaning of these provisions. Subsection (2) excepts not only out of subs. (1), but also out of all the preceding sections of Pt. II of the Law of Property Act, leases for less than three years. By the definition in s. 205 (1) (xxiii) the word "lease" includes "an underlease or other tenancy." It follows that s. 54 (2) permits the creation of any tenancy for a period of less than three years by parol. Hence a parol weekly tenancy can be validly created and is a legal estate. Apart from this subsection, no legal or equitable interest in land can be created without writing or a deed, except as an interest at will; resulting, implied and constructive trusts are likewise excepted by s. 53 (2).

My correspondent goes on to say that where a tenant is let into possession, and given a rent-book without any memorandum in writing, "I do not consider it necessary for the protection of a vendor to refer to such tenancy in the conveyance, it having already been mentioned in the particulars of sale or contract." He then quotes a statement in Halsbury, 2nd ed., vol. 29, p. 439, to the effect that the purchaser has from the fact of the tenant's occupation notice of his interest, whatever it may be, and he takes, accordingly, subject to the tenant's rights, to which he must give effect. It is further stated that after completion the purchaser becomes entitled to exercise, in place of the vendor, all such rights of ownership as are incident to the estate conveyed. These observations lead up to the contention that it would appear that if a purchaser takes his conveyance with notice of a tenancy he would be barred from taking any action against his vendor under the covenant for title. I agree that my correspondent sets out very clearly the usual view of this matter. But I do not think that such view is correct. I naturally accept the whole of the statements quoted from Halsbury as correctly defining what they set out to define, namely, the position as between the purchaser and the tenant. What they do not affect is the position between the vendor and the purchaser. Nor, in my view, is it sufficient to refer to these matters in the contract. The contract merges in the conveyance and thereafter can only be referred to as one of the materials in proceedings for rectification of the conveyance.

When I wrote the "Diary" of 21st December, I stated that I had recently been talking to three solicitors, two from the country and their London agent, all experienced practitioners, about a case where difficulties had arisen owing to the fact that a conveyance had been taken without an express reservation in respect of an interest which should have been reserved. The case in question led to very heavy litigation in the Chancery Division, which will (rightly) not be reported, but which it may be helpful to summarise briefly here. In 1937, A and B were carrying on a business in partnership. Certain property was bought with A's money and was conveyed into the name of A. In 1940, the partnership was determined by agreement, but B continued to carry on business in the premises. Negotiations for the winding-up of the partnership having failed, A proceeded to sell the property to X, to whom he gave notice that B was still in possession, and it was expressly provided in the contract that the sale to X was subject to B's occupation. The conveyance, in accordance with the usual, but wrong, practice, said nothing about B. Shortly after completion, X gave B notice to quit, and when B failed to comply, brought proceedings in the King's Bench Division for ejectment. B defended the action on the ground that the property was partnership property and that A had no right to sell it over his head. B also joined A as defendant to a counter-claim for a declaration that the property was partnership property and for the winding-up of the partnership. X then proceeded against A by third party

notice on the covenant for title, and A put in a defence to the effect that the property was not partnership property and that he had not broken his covenant for title. All these proceedings took about two and a half years, and the pleadings were described by the learned judge as the most "comprehensive" that he had ever seen. Eventually, the action was transferred to the Chancery Division, the main issue, of course, being whether the property was partnership property. At this point it seemed to A's advisers that it was desirable to amend A's defence to the third party notice by claiming rectification. It will be remembered that the contract under which A sold to X was expressly subject to B's occupation. They felt that if the result of the partnership issue was that B turned out to have some right of occupation, it was essential for the protection of A in the proceedings on the covenant for title, that there should be written into the conveyance a reservation to the same effect as that in the contract. A therefore amended his pleadings by counter-claiming to the third party notice for rectification in this sense, and he had the satisfaction of learning on the first day of a very long trial that counsel for X did not feel able to resist this counter-claim, which therefore succeeded. The eventual upshot of the trial was that the land was held not to be partnership land at all, so that the rectification ceased to matter, since B was a mere trespasser. But the point to which I desire to draw attention is that X's advisers evidently regarded it as impossible to resist A's counter-claim. I do not feel any doubt at all that they were right in their decision.

Though this case is of no general interest in other ways, I do think it has some considerable bearing on the matter discussed in the "Diary" of 21st December, namely, that the existing practice of not referring to tenancies in a conveyance is quite wrong. At the same time, assuming that adequate notice of the particulars of the tenancies has been given to the purchaser (whether in the contract or otherwise), I do not feel that it is necessary to encumber the conveyance with detailed schedules of each and every existing tenancy in a case where the property sold is subject to an inconvenient number of short tenancies. All that is necessary is that in the habendum the property shall be stated to be conveyed "to hold unto the purchaser in fee simple subject to the existing tenancies affecting the same but otherwise free from incumbrances." If the words "subject to the existing tenancies affecting the same" are omitted, and if the vendor cannot succeed in an action for rectification (which is often extremely difficult), he will be liable to proceedings upon his covenant for title, because he will not be giving the purchaser the unincumbered estate in fee simple.

LANDLORD AND TENANT NOTEBOOK

SECOND NOTICE TO QUIT

"PEOPLE are getting very casual about notices to quit," I heard a county court judge observe recently, in grumbling tones; just when everyone was expecting him to welcome tackling a point of law after spending some hours drawing up hardship balance-sheets. To some extent, it may well be suggested that casualness has been encouraged by *Dagger* v. *Shepherd* (1945), 62 T.L.R. 143 (C.A.) (notice to quit "on or before": see 90 SOL. J. 27). Still, in that case the judgment did cite with approval the classic passage from that of Lord Coleridge, C.J., in *Gardner* v. *Ingram* (1889), 61 L.T. 729: "although no particular form need be followed, there must be plain unambiguous words claiming to determine the existing tenancy at a certain time." In most of the many cases in which that passage has been cited, what has been in dispute was either the plainness of the words or the certainty of the time. But it would follow, if the emphasis were transferred for a moment to the words "determine" and "existing," that waiver of a notice to quit is a contradiction in terms. A contract has but one life.

The position was stated with admirable succinctness by Sherman, J., in *Davies* v. *Bristow* [1920] 3 K.B. 428, in these terms: "A landlord can no more waive his notice to quit than he can waive the effluxion of time." The attention of the court which decided the recent case of *Loewenthal* v. *Vanhoute* [1947] 1 All E.R. 116, was not drawn to this statement; it certainly might have been used to clinch the successful argument.

What had happened in that case was as follows: On the 14th September, 1946, the plaintiff landlord gave the defendant tenants a week's notice to quit the furnished premises let to them, the notice expiring on the 21st September. On the 30th September they referred or purported to refer the contract to the local Furnished Rents Tribunal. On the 4th October the landlord's solicitors gave, or purported to give, the tenants notice to quit expiring on the 12th October. The action was brought, claiming possession, before the tribunal had decided the reference (if it ever did) and the defendants claimed that by virtue of s. 5 of the Furnished Houses (Rent Control) Act, 1946, the notice to quit, having been given after the reference was made, was extended till three months after that decision unless a shorter period should be ordered.

The defence sought to rely on a passage in a text-book and on *Doe d. Brierly* v. *Palmer* (1812), 16 East 53. The headnote to that case does indeed include the following: "But a second notice to the defendant . . . is a waver as to him of a former notice given to the original lessee, from whom he claimed by assignment . . ." But the decision actually turned on the question whether the defendant had been shown to be holding over (the lease was one of tithes), and the passage in the headnote appears to be based on an observation made by Lord Ellenborough, C.J., not in his judgment but in the course of the hearing, when, counsel having urged that the giving of a notice to quit did not operate to create a tenancy in the defendant, the learned Chief Justice said: "It does not necessarily do so, but it is generally considered as an acknowledgment of an existing tenancy; and if the party obey the notice, how can he be deemed a trespasser on account of a prior notice to another person? Nothing appears to show that the defendant had knowledge of any other notice to quit than the one which was served upon him." From which one can gather that the facts belonged to the category "very special"; and they were, indeed, that the landlord had given her original tenant notice in ignorance of the fact that he had just assigned his tenancy to the defendant, and then given the defendant a notice expiring a year after the first notice, he being ignorant of that first notice; and Lord Ellenborough did not, as does the headnote, say anything about waiver: his observations are more consistent with the view that a new tenancy had been created than with the view that the old one continued to exist.

Davies v. *Bristow* was not cited in *Loewenthal* v. *Vanhoute*, but Denning, J., dealt with *Doe d. Brierly* v. *Palmer* by saying that the observation of Lord Ellenborough was not in itself sufficient to carry the proposition as stated in the text-book.

What happens rather more often, perhaps, is that parties come to some agreement after a notice to quit has been served but before it has expired. The judgment of Denning, J., in the recent case actually covers this: "When a notice to quit has been *given*, a new tenancy can be created only by an express or implied agreement." It is true that Parliament itself has, in one case at least, visualised the "withdrawal" of a notice to quit: in s. 12 of the Agricultural Holdings Act, 1923 (compensation for disturbance). Proviso (i) to subs. (1) says: "Compensation shall not be payable . . . where the landlord has made to the tenant an offer in writing to withdraw the notice to quit and the tenant has unreasonably refused or failed to accept the offer." And possibly some critical reader may have remembered, when he came to the last sentence of my first paragraph, that if a contract has but one life courts have been authorised, in apt circumstances, to apply a process akin to artificial respiration: by the Common Law Procedure

Act, 1852, s. 212, the ex-tenant, whose lease has been forfeited for non-payment of rent and who avails himself of the section "shall have, hold and enjoy the demised lands, according to the lease thereof made, without any new lease." But, in the case of the recognition of withdrawal of a notice to quit at all events, one may wonder whether the possible implications have all been realised.

The unsuccessful landlord plaintiff in *Tayleur* v. *Wildin* (1868), L.R. 3 Ex. 303, a case argued at great length and resulting in much judicial disagreement, was certainly made to realise one of those implications, namely, the effect on a guarantee. For the defendant had guaranteed performance of a tenant's obligations; a notice to quit had been given, and "withdrawn"; the tenant defaulted, and the defendant successfully contended that this was not the tenancy he had guaranteed. Kelly, C.B., pointed out that a notice to quit could not be withdrawn without the consent of both parties. Bramwell, B., tersely described the position in these terms: "The parties may by a parol contract create a new tenancy, which is *what is meant* by the phrase withdrawing the notice, but the old tenancy no longer exists." Later, Irish courts expressed strong disapproval of this reasoning and decision, but it was applied in *Freeman* v. *Evans* [1922] 1 Ch. 36 (C.A.): breach of a covenant against sub-letting had been waived; the mesne tenant demanded an increased rent of his sub-tenants, who declined to agree until notice to quit had been given; on their agreeing the mesne tenant "cancelled" the notice. It was held that a new tenancy had been brought into being, commencing with the expiration of the "cancelled" notice to quit, and the plaintiffs were therefore entitled to re-enter.

TO-DAY AND YESTERDAY

February 3.—On the return of the monarchy the Inns of Court tried to revive their ancient recreations, but with difficulty. On 3rd February, 1664, the Gray's Inn steward was fined 40s. "for his defaults upon the Grand Day and the fine is to be deducted out of his next allowance."

February 4.—In 1676 Mr. Richard Chamberlayne of Gray's Inn was in trouble for keeping women in his chamber. On 4th February "at his request the first day of next term is given for him to remove his women out of his chamber and if he make default in so doing his said chamber is to be seized to the use of the House."

February 5.—In 1677 the old educational system of the Inns of Court was dying. The senior members would not consent to hold the Readings but efforts were still being made to compel them. At Gray's Inn on 5th February, John Warren was fined £100 for refusing to read.

February 6.—In the following year, 1678, another potential Reader was better advised. On 6th February, it is noted: "Whereas John Crisp, Esqr., hath offered to pay £20 to the use of this Society in case he may be dispensed with for his call to the Bench in order to his Reading, it is ordered accordingly, he first paying the sum so offered by him to the present Treasurer."

February 7.—In 1679 the historic scare of the "Popish Plot" was gripping England, and on 7th February the Gray's Inn Benchers ordered the Principals of Staple Inn and Barnard's Inn to attend them "with the names of all papists and reputed papists in their respective houses requiring them and every of them then and there to give their attendance and to take the oaths of allegiancy and supremacy in obedience to a commission under the Great Seal of England to the Benchers of this Society directed for that purpose." The oaths were tendered to John Winchcomb and Thomas Yates of Gray's Inn and taken by them and the Principals of the Inns of Chancery reported "that no persons are residing there who are papist or so reputed."

February 8.—On 8th February, 1682, the Gray's Inn Benchers ordered "that in respect of the decay of the profits of the head cook's place by not having Readings and Grand Days, that Thomas Bowler, the head cook of this Society, have paid him out of the Treasury of this House £3 per term for the year ensuing and no longer."

February 9.—On 9th February, 1685, the Gray's Inn Benchers ordered that Richard Tonson should have a lease of his shop under the old gate into Gray's Inn Lane. He was the elder brother of Jacob Tonson, the bookseller, who was Dryden's publisher, and who succeeded him as a tenant of the Inn. This gate was ordered to be rebuilt in 1688. On the same day it was ordered "that no gentlemen of this Society whilst in commons shall, in commons time, appear in the Hall without their gowns and that all members of this Society shall behave themselves decently according to the ancient orders of this House." It was also ordered that the proprietors of Howland's, Cage's, Goodrick's and Downes' Buildings should rebuild them. These stood in the south-west corner of Holborn Court, Downes' Buildings being nearest the passage into Holborn, Goodrick's next to them, and the other two on the west side of the angle. In this rebuilding the passage north of Howland's Buildings leading into Bentley's Rents behind the court disappeared. Downes' Buildings were put up in 1611 on the site formerly occupied by the Irish Rents. Roger Downes, whose name they bore, was Vice-Chamberlain of the County Palatine of Chester. Richard Goodrick's Buildings had been put up on a vacant piece of ground in 1579. Cages' Buildings were already standing then.

Witchcraft Laws

That horrific Danish film "Day of Wrath," depicting a witch-finding episode in a seventeenth century Lutheran village, has had a long London run. The setting recalls the interesting fact that it was in post-Reformation times and especially under the Puritans that witchcraft trials waxed and flourished. Before then necromancy was not a capital offence *per se*. True, if a necromancer set out to use his art for ends otherwise unlawful he might suffer at the hands of the law as when the Duchess of Gloucester's sorcerer, Roger Bolingbroke, was condemned to death for treason in directing his powers against the King. The first enactment making witchcraft a felony appeared on the statute book in the time of Henry VIII and, though after his death it was repealed, the current of public opinion had set in the direction of this form of persecution and, under Henry's daughter Elizabeth, a fresh Act was passed in 1562–63 making it a capital offence to cause death by witchcraft. Scotland in the same year was given a statute imposing the death penalty for sorcery. Evidently it was felt that it met a crying need, for these prosecutions numbered about thirty annually at the start and in about forty years they had multiplied by more than ten. By that time James VI of Scotland had become the first of his name in England and he brought with him to his southern kingdom all the zeal displayed in this matter in his native land. He was something of a specialist on the subject, being himself the author of a text-book on demonology, and one of the first effects of his influence among his new subjects was the appearance of a fresh Statute of Witchcraft, awarding death without benefit of clergy to any who should conjure an evil spirit, or employ or reward him, or exhume any corpse for purposes of witchcraft, or practice any witchcraft whereby anyone should be killed or wasted. Now the witch hunt was up, and for many a year its victims were tracked and harried, particularly in Puritan East Anglia and under the Commonwealth, which on this point, at any rate, found itself at one with the Stuarts. It was at Manningtree that the Witch-Finder—General Matthew Hopkins started his notorious career.

Sermons on the Subject

From the start of the witchcraft fever learned divines encouraged it. Thus Bishop Jewell, preaching before Queen Elizabeth, warned her: "It may please your grace to understand that witches and sorcerers within these last four years are marvellously increased within your grace's realm. Your grace's subjects pine away, even unto the death; their colour fadeth, their flesh rotteth, their speech is benumbed, their senses bereft. I pray God they may never practise further than upon the subject!" Just a little before, Sir Samuel Cromwell, a Huntingdonshire squire, had endowed an annual sermon to be preached by a Doctor or Bachelor of Divinity of Queens' College, Cambridge, on the enormity of witchcraft. It is known that it was still being preached in 1718. Perhaps it went on till the repeal of the statute of King James in 1736. The funds for the endowment came to Sir Samuel, as lord of the manor, in respect of a successful prosecution for witchcraft in 1593, in which he had been the prime mover. The alleged witch was a certain Mother Samuel, old and ugly, with just the sort of looks that would draw popular suspicion on to her. Her husband and her pretty young daughter were also dragged into the affair and in the event the whole family were executed. The allegation was that she had cursed and caused the death of Lady Cromwell after she had intervened to assist some neighbours named Throgmorton, whose children were alleged to have been bewitched by the old woman. No one seems to have doubted it.

COUNTY COURT LETTER

Wrongful Dismissal of Manageress

IN *Burt* v. *Bentleys*, at Bournemouth County Court, the claim was for damages for wrongful dismissal, viz., £28 as four weeks' wages and £55 for commission. The plaintiff's case was that in 1942 she made a verbal agreement with the defendants (who were ladies' outfitters and jewellers) to manage their business for a weekly salary of £5 plus a quarterly commission of 6d. in the £ on gross takings over £40. Until July, 1945, the business flourished and the plaintiff's wage was increased to £7 per week. There was also a plan for opening a branch at Brighton with the plaintiff as manageress. On the 27th July, 1945, the plaintiff was given a week's notice and was offered £10 as her salary for the week prior to and the week following her dismissal. The plaintiff, however, claimed four weeks' wages at £7 per week and one quarter's commission. The defence was a denial of any agreement to pay commission. The money paid in previous quarters had been a bonus. His Honour Judge Cave, K.C., gave judgment for the plaintiff for £28 wages and £50 for commission, with costs.

Alleged Warranty of Motor Car

IN *Hopkins* v. *Jose*, at Bournemouth County Court, the claim was for £90 as damages for breach of warranty of a motor car. The plaintiff's case was that on the 12th November, 1945, he was taken for a short run in a 1933 model Standard 9 car, which the defendant stated was " as sound as a bell, will take you to London and back and will pull a house." The price asked was £150, but the report of an engineer was that the car was only worth £135. The plaintiff paid £145 for the car, but he found that the brakes were useless. Repairs to the engine, brakes and back axle, to make the car serviceable, would cost £35. The defence was a denial of any warranty. His Honour Judge Cave, K.C., held that the plaintiff did not rely upon the defendant's " puff," but upon the engineer's report. The price also had to be considered. Judgment was given for the defendant, with costs.

Tenant's Liability for Damage

IN *Jennings* v. *Brown*, at Trowbridge County Court, the claim was for £6 as damages and £1 15s. in respect of loss of rent. The plaintiff's case was that a bungalow was let in 1939 to the defendant's father, and after his death members of the family continued in possession. In 1945 they were given notice to quit, which was complied with. It then transpired that the lavatory basin was cracked and leaked, and there was other damage. The defendant alleged that this was due to enemy action in April, 1942. This was not reported, and no claim had been made by the plaintiff against the War Damage Commission. The plaintiff had occupied the adjoining bungalow, which sustained no damage from blast. The defendant's case was that there was no leak when he vacated the premises. The crack in the basin was caused by a safety razor being shaken from a water tank above the basin. His Honour Judge Kirkhouse Jenkins, K.C., held that the damage was caused by the defendant's negligence. The plaintiff was not entitled to recover for loss of rent, but judgment was given in his favour for £6 damages, with costs.

Customary Hiring of Farm Workers

IN *Coney* v. *Steed*, at Boston County Court, the claim was for possession of a cottage. The plaintiff was a farmer and his case was that he had formerly employed the defendant as a labourer. By virtue of that employment the defendant had occupied the cottage, in respect of which 3s. a week was deducted from his wages. The plaintiff gave notice to terminate the employment in February, 1946. Since the 16th March the defendant had worked for another employer, but he still occupied the plaintiff's cottage. The defendant was paid weekly, and could be given a week's notice at any time. The latter contention was denied by the defendant, whose case was that the customary hiring of a farm worker in the locality was from the 14th February to the 6th April in the following year. His Honour Judge Shove held that the defendant had failed to establish the existence of such a custom. If it existed, the defendant might be able to sue his former employer for damages for wrongful dismissal, but the defendant was not entitled to remain in the cottage. An order for possession was accordingly made, as the defendant had had a service occupancy and not a tenancy.

More work is expected at Old Street as a result of changes in the boundaries of the Old Street, Clerkenwell and North London magistrates' courts which came into force on 1st February.

POINTS IN PRACTICE

Questions from solicitors who are REGISTERED ANNUAL SUBSCRIBERS are answered, without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 88–90, Chancery Lane, W.C.2, and contain the name and address of the subscriber and a stamped addressed envelope.

Requisitioned premises

Q. A is a lessee of a dwelling-house controlled under the Rent Restriction Act, 1939. These premises are requisitioned by the local authority. A few weeks ago the occupier of the premises vacated them, and A, under the mistaken belief that this automatically de-requisitioned the premises, let them to B. A contends that B was aware of all the circumstances at the time of the letting, but also mistakenly believed that A could in fact let the premises to him. The local authority are now insisting upon possession of the premises and are instituting proceedings against B for the possession of the premises. A has received rent of the premises from B and has also received compensation rent from the local authority, but has pointed out to the authority that he is in fact receiving rent as well from B. Would you please advise us :—

(1) Has the local authority any action (and if so, what) against A ?

(2) Has B any (and if so, what) action against A ?

(3) What is the best thing for A to do in the circumstances ?

A. (1) The local authority can institute proceedings against A for trespass, i.e., by occupying the premises through his licensee, B.

(2) B can sue A for breach of his implied covenant for quiet enjoyment. See *Markham* v. *Paget* [1908] 1 Ch. 697.

(3) A should return the rent paid by B, and persuade B (if possible) to leave.

Joint tenants—RIGHT OF SURVIVORSHIP

Q. In 1930 A and B, who are husband and wife, purchased property as joint tenants beneficially. B has since died, and by her will gave her share in the property to her husband, but should he re-marry her share was to go to the daughter C. B appointed A and D executors of her will, who duly proved the same. The property has now been sold. It is not known whether A has re-married or not. To whom should the money due under the sale of the property be paid in respect of the wife's share :—

(1) If he has married ?

(2) If he has not married ?

A. If this property was in fact conveyed to A and B as joint tenants (at law and) in equity, as we understand was the case, then, on the death of B, A takes absolutely in equity by the right of survivorship, and will be able to deal with the legal estate as if not held upon trust for sale (Law of Property (Amendment) Act, 1926, Schedule, amending the Law of Property Act, 1925, s. 36). B had no " share " to leave by will. A can make title as indicated above and will be entitled to the whole proceeds of sale. We are not in a position to say whether any question of election can arise under the will of B.

CORRESPONDENCE

[*The views expressed by our correspondents are not necessarily those of* THE SOLICITORS' JOURNAL]

Companies Bill : Nominee Holdings

Sir,—Are not these provisions in some respects a little impracticable ?

If they remain unaltered, everybody who has any interest in any settled fund, whether under a will or a settlement, will have to ask himself or herself (A) whether he or she has a power of appointment, and (B) whether he or she is one of a group of beneficiaries all of whom are *sui juris* and together could end the settlement.

If he or she finds that the answer to either question is in the affirmative, then his or her name must be entered on the new register.

This is all very well in theory, but alas not two in twenty thousand of such persons would ever read the new Companies Act or, if they did read it, would understand that it was imposing these dire obligations on them.

MERYN LEWIS.

London, W.1.

OBITUARY

MR. J. O. STRONG

Mr. John Owen Strong, solicitor, of Messrs. Strong & Co., solicitors, of Gracechurch Street, E.C.3, died on Thursday, 30th January. He was admitted in 1930 and was the author of " A Practical Guide to Searches."

REVIEWS

Tristram and Coote's Probate Practice. Edited by C. T. A. WILKINSON, E. W. LEADER and G. M. GREEN. Nineteenth Edition. 1946. London: Butterworth & Co. (Publishers), Ltd. 75s. net.

The consulting editor and the editors of this book are well-known authorities on the law and practice of probate and estate duty and require no introduction to readers. In the nineteenth edition they have brought the book up to date in an admirable manner, and it is a worthy successor to the editions that have appeared over the last eighty-eight years. Six years have gone by since it last appeared, and despite the issue of most useful cumulative supplements, the time was ripe for a new edition. It was a most unfortunate chance that publication should have taken place just before the introduction of the Finance Bill, 1946, but as the Estate Duty section of the work deals more with the appropriate uses of the various forms of affidavit for Inland Revenue, rather than with the law relating to Estate Duty, the matter is of small importance. The Preface briefly summarises the Bill and, with the exception that it was not possible to note that the proposal to extend to two years the one-year period relating to gifts *inter vivos* made for charitable purposes was not enacted, the summary is correct.

The chapter dealing with settled land has been rewritten to a great extent. Its revision was overdue, and the revised chapter is much clearer and easier to read than the corresponding parts of the earlier editions. The subject has been dealt with exhaustively, and there should be few questions the answer to which cannot be found in these pages.

As a result of the decision in *Re Anderson* [1944] P. 1, the practice of the probate registrars with regard to the privileged wills of sailors, soldiers and airmen has hardened very considerably. The observations of the President in that case have made the acceptance of the privileged will of a soldier, made whilst he was serving in this country, a difficult matter, unless he was at its date under immediate orders to proceed to an active theatre of war. The fact of his being in the Forces did not of itself place him "in actual military service." This aspect of the law is fully and clearly explained, and the leading cases examined and distinguished.

The statement that, when a privileged will is attested by two witnesses, there is a *prima facie* presumption that it was intended to be executed in accordance with s. 9 of the Wills Act, 1837, reads strangely. It cannot mean that evidence of due execution may be called for, for that is negatived by the earlier statement that not even evidence of the handwriting of the testator is required. If the will be made on a privileged occasion "in whatever mode a soldier's wishes are declared . . . there is a binding will by force of his mere intention." The statement of Justinian is surely true to-day, and if a will were made "in actual military service," the attestation by witnesses is immaterial and no question of s. 9 arises.

Part II of the book, which deals with the contentious practice of the Division, is well up to its usual standard. It provides a complete and comprehensive guide to the preparation for court of matters in which contention has arisen, and will be of invaluable help to anyone having the conduct of a probate application or action.

The printing of the book is of the high standard associated with its publishers and the distinctive binding makes it a worthy companion to the others of the series of modern legal text-books. The provision of a pocketed cover is a useful arrangement for the storage of any supplement that may be issued.

How to Become a Solicitor. By H. GALLIENNE LEMMON, M.A., LL.M. 1946. London: Vawser & Wiles, Ltd. 5s. net.

All who have ambitions to enter our profession will find this an attractive and instructive book to read. It contains all the necessary information on the examinations, articles and other essentials and formal preliminaries as well as a complete account of a solicitor's work, both in the office and in court. Every aspirant to the profession should obtain a copy, as it contains all that he need know before entry. It is well bound and contains a number of excellent photographs.

At the Annual General Meeting of the Southport and Ormskirk Law Society, held on the 31st January, 1947, the following were appointed officers for 1947: President, Mr. JAMES YATES; Vice-President, Mr. A. F. WORDEN; Honorary Secretary, Mr. E. W. MAWDSLEY; Honorary Treasurer, Mr. C. D. WATSON.

NOTES OF CASES

HOUSE OF LORDS

Searle *v.* Wallbank

Viscount Maugham, Lord Thankerton, Lord Porter, Lord Uthwatt and Lord du Parcq. 16th December, 1946

Highways—Negligence—Horse straying on highway by night—Cyclist injured by collision—Liability.

Appeal from a decision of the Court of Appeal.

In April, 1944, at night, the plaintiff was riding a bicycle along a public highway when he collided with a horse belonging to the defendant, which had strayed from his field. In the action in the county court the judge found that the horse was in the road because of defective fencing, and held, on the authority of *Heath's Garage, Ltd.* v. *Hodges* [1916] 2 K.B. 370, that, there being no duty on the defendant to maintain his fences, and consequently no breach of duty on his part, the action failed. The plaintiff's appeal to the Court of Appeal was dismissed, and he now appealed to the House of Lords. Their lordships took time.

Viscount MAUGHAM said that the questions were (1) whether the defendant, as owner of a field abutting on the highway, was under a *prima facie* legal obligation to users of the highway so to keep and maintain his hedges and gates along the highway as to prevent his animals from straying on it; (2) whether, assuming no such general duty, he was under a duty, as between himself and users of the highway, to take reasonable care to prevent any of his animals (not known to be dangerous) from straying on to the highway. Until enclosure was effected, roads and ways could not be made since either the landowner, the lord of the manor or persons with common rights would have objected. When enclosure took place roadmaking and fencing became very desirable and often essential. The absence of any provisions, in a multitude of Acts, for the repair and maintenance of hedges or fences beside the roads by the owners of adjoining lands was fair ground for thinking that the Legislature did not intend to impose any such liability. The roadside owner who put up no fence would not be under any duty to passers-by as regards horses and cattle. On what principle could such a duty be imposed on one who chose to erect a fence with a view to keeping out trespassers, or in an endeavour to prevent his cattle and horses from straying? Roads were laid out largely for the benefit of owners of adjacent land, including farmers. No one supposed that cattle and horses could be driven to market except on a road. Road users could not expect to have the roads kept clear of animals. The first question must be answered in the negative, therefore the second question arose, namely, that based on the alleged negligence of the defendant. It seemed to him (his lordship) that no such duty to road users as the plaintiff relied on could possibly have existed before the advent of fast traffic on made-up roads. Hedges and fences were generally constructed and maintained in the interests of the owners of adjacent lands, and accidents to road users arising from the straying of animals on to the roads were, so far as one could judge, practically non-existent. Since the advent of fast traffic, accidents due to straying animals still seemed to be exceedingly rare. Moreover, they also arose when animals were being led or driven along highways in the usual course of husbandry, and no one suggested that motorists and cyclists had a *prima facie* right of action against the person in charge of them. More frequently such accidents were caused by dogs or fowls, which could get through or over any ordinary hedge, and counsel for the plaintiff admitted that no action would lie against the owners in such cases. No facts had, in his (his lordship's) opinion, been established which would tend to show that farmers and others had, at some uncertain date in our lifetime, become subject for the first time to an onerous and undefined duty to cyclists and motorists and others which never previously existed. The fact that the duty did not exist if the road was unenclosed by fences and yet accidents were rare was, he thought, strong to show that the defendant was not bound as a reasonable man to think that his failure to fill up a gap in his fence was likely to cause such an accident as the one which had occurred. The appeal would be dismissed.

The other noble and learned lords concurred.

COUNSEL: *R. T. Paget* and *Silkin*; *Beney*, K.C., and *A. J. Flint*.

SOLICITORS: *Sharpe, Pritchard & Co.*, for *C. L. Hale*, Nuneaton; *Nash, Field & Co.*, for *Blewitt & Co.*, Birmingham.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

COURT OF APPEAL

Hood-Barrs *v.* Inland Revenue Commissioners

Lord Greene, M.R., Cohen and Asquith, L.JJ.

21st November, 1946

Revenue—Income tax—Appeal heard by two Special Commissioners only—Validity—Income Tax Act, 1918 (*8 & 9 Geo. 5, c. 40), ss. 67 (2), 230 (2).*

Appeal from a decision of Wrottesley, J.

The appeal from a certain assessment was heard by two Commissioners for the Special Purposes of the Income Tax Acts, who confirmed it. Wrottesley, J., upheld their decision. On appeal to the Court of Appeal the point was also taken, which alone calls for report, that there was no jurisdiction for two Commissioners to decide the original appeal against the assessment.

LORD GREENE, M.R., said that the practice of two Commissioners' holding a meeting for hearing an appeal and, when asked to do so, signing a case, had persisted since 1877 at least, and had first been challenged by this same appellant on his appeal from a conviction for perjury (*R.* v. *Hood-Barrs* [1943] K.B. 455). The perjury of which he was convicted had been committed at a hearing by two Commissioners, and he took the point before the judge who tried him, and afterwards in the Court of Criminal Appeal, that that was not a hearing before a properly constituted tribunal. The decision of the Court of Criminal Appeal rejecting that contention was not binding on the court, but was of great persuasive authority. The appellant had now taken two points: (1) that there was not a quorum, and (2) that no meeting of Commissioners was proper unless summoned by notice to all the Special Commissioners. The Crown was prepared to have the case disposed of on the presumption that no summoning of the whole body of Commissioners ever took place. It seemed to be clear that there was a quorum. By s. 67 (2) of the Income Tax Act, 1918: "In cases in which the Special Commissioners have authority . . . to hear appeals, they shall possess . . . all the powers of the additional Commissioners and general Commissioners . . ." By s. 230 (2): "Anything required under this Act to be done by the general Commissioners, the additional Commissioners, the Special Commissioners, or any other Commissioner may, save as otherwise expressly provided, be done by any two or more Commissioners." It was clear, and a necessary inference from the decision of the Court of Criminal Appeal, that it was nowhere provided that more Commissioners than two were needed to decide an income-tax appeal. It was pointed out, however, that a majority of the Commissioners would decide an appeal and that there could not be a majority with only two Commissioners. It was quite impossible to read from the Act that a majority was necessary. As for the second point, there was no provision that all the Commissioners must be summoned, and none for summoning a meeting except in the special case of the dismissal of a clerk. There was no provision of that kind in regard to the hearing of appeals. The appeal failed.

COUNSEL: *Serjeant Sullivan,* K.C., and *Sophian; Sir David Maxwell Fyfe,* K.C., *David Jenkins,* K.C., and *Hills.*

SOLICITORS: *J. de Maza & Co.; Treasury Solicitor.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Newcastle-under-Lyme Corporation *v.* Wolstanton, Ltd.

Morton, Somervell and Cohen, L.JJ. 21st January, 1947

Gas undertaking—Plaintiff authority owns gas pipes under highway—Defendants own subjacent minerals—No right to let down surface—Surface let down—Pipes damaged—Right of authority to compensation—Gas Works Clauses Act, 1847 (*10 & 11 Vict. c.* 14), *s.* 6—*Public Health Act,* 1875 (*Support of Sewers*) *Amendment Act,* 1883 (*46 & 47 Vict. c.* 37), *s.* 4.

Appeal from a decision of Eversheld, J. (90 SOL. J. 419).

In this action the plaintiffs, the local authority of the area, claimed a declaration that the defendant company were not entitled to work their minerals under the plaintiffs' gas mains and pipes within the borough of N in such a manner as to injure them, and damages. The corporation sued as the gas undertakers of the area, by virtue of a series of local Acts and Orders. All the gas pipes and mains with which the action was concerned were laid under public highways and were laid in exercise of the general powers contained in s. 6 of the Gas Works Clauses Act, 1847, or in pursuance of corresponding provisions in private Acts. There had been no exercise of any power to acquire easements or other proprietary interests by agreement. All the pipes and mains in question were the property of the corporation. The defendants were the owners of the mines and minerals under the area, which they were working. It was admitted that from 1934 onward their operations had caused substantial damage to the corporation's gas pipes as a result of the subsidence caused to the surface. The movement of the surface had not been aggravated by the presence of the gas pipes. The defendants had no right to let down the surface. The Railway and Canal Commission had made certain orders empowering the defendants to work the minerals on payment for damage caused to the surface. It was conceded by the corporation that, apart from certain subsidiary claims, they could not make any claim against the defendants under the Public Health Act, 1875 (Support of Sewers) Amendment Act, 1883, or the "Mining code" incorporated therein from the Waterworks Clauses Act, 1847, as they had failed to comply with s. 19 of the 1847 Act as modified by s. 3 (3) of the 1883 Act and keep the necessary maps and plans. Evershed, J., gave judgment for the corporation.

MORTON, L.J., said that he agreed with Evershed, J., with one vital exception. He agreed: (*a*) that the corporation had no right of ownership of the soil in which its pipes were laid; (*b*) that it was not the tenant of any part of the soil; (*c*) that no easement was vested in the corporation; (*d*) that the corporation had no title, legal or equitable, in that soil; (*e*) that the corporation was not the inheritor of the right to support admittedly vested in the owners of the surface land. Further, and here he differed from Evershed, J., the corporation had not the exclusive right to occupy any portion of that soil, as distinct from the space or cavity occupied by its pipes. To what did these conclusions lead? They led him to the conclusion that the corporation never acquired any right of support against the defendants, except the implied right arising from the exercise of the corporation's statutory powers as explained in *Normanton Gas Co.* v. *Pope & Pearsons, Ltd.* (1883), 49 L.T. 798. All the corporation had was the right to occupy a cavity in the ground which was entirely filled by the pipes in question. A cavity could not have attached to it a natural right of support, nor could a gas pipe, although a right to have it supported might be acquired in other ways. It was not contended that any prescriptive right to support had arisen. In his judgment, the only right to support against the defendants was the implied right to support under the *Normanton* principle. That right was swept away by s. 4 of the 1883 Act. It was a right which the corporation were deemed to have acquired by the Sanitary Acts under the authority of which their works were constructed. Section 4 did not affect any right of support acquired under the *Normanton* principle against the owners of the soil. The action should have been dismissed on the ground that the corporation had failed to establish any existing right to support against the defendants. The basis of Evershed, J.'s, conclusion in favour of the corporation was that they had possession of some part of a stratum of soil which enjoyed a natural right of support. This conclusion was inconsistent with the view that the corporation were not the inheritors of a natural right of support. He did not feel that the conclusion which he had reached involved injustice. The corporation would have had the extensive protection of ss. 18 to 27 of the Waterworks Clauses Act, 1847, as modified by the 1883 Act, if the provisions of the Acts had been carried out. The Legislature had intended to substitute the protection of the mining code for the kind of right of support which had previously been enjoyed by the corporation. With regard to the subordinate issues, he agreed with Evershed, J. He did not accept the corporation's proposition that no compensation was, or could ever be, payable in respect of pipes laid before 1883, and accordingly s. 5 of the 1883 Act applied. Nor did he accept the proposition that, if the plaintiffs were prevented from recovering damages by s. 4 of the 1883 Act for injury to pipes occasioned by workings of minerals within the 40-yard strip, they could still recover damages in so far as the injury was caused by workings outside a distance of 40 yards. The appeal succeeded and judgment must be entered for the defendants.

SOMERVELL and COHEN, L.JJ., agreed in allowing the appeal.

Leave to appeal to the House of Lords.

COUNSEL: *Sir Cyril Radcliffe,* K.C., *Andrew Clark,* K.C., and *J. B. Herbert; Harman,* K.C., and *Wilfrid M. Hunt.*

SOLICITORS: *Routh, Stacey, Hancock & Willis,* for *Ellis and Ellis,* Burslem; *Sharpe, Pritchard & Co.,* for *J. Griffith,* Newcastle-under-Lyme.

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.

CHANCERY DIVISION

***In re* C. W. Dixon, Ltd.**

Vaisey, J. 20th January, 1947

Company—Dissolution declared void—Property vested in Crown as bona vacantia—Whether revested in company—Companies Act, 1929 (*19 and 20 Geo. 5, c. 23), s.* 294.

Motion.

On the 12th June, 1941, at an extraordinary general meeting of D., Ltd., a special resolution was passed for the voluntary winding up of the company and M was appointed liquidator. He collected and realised the assets of the company and distributed the proceeds among the contributories with the exception of certain freehold properties vested in the company and leaseholds vested in a trustee for it. By an agreement made between the liquidator and all the contributories it was agreed that these properties should be divided between the contributories in specie. Pursuant to the provisions of s. 236 (4) of the Companies Act, 1929, the company became finally dissolved on the 28th January, 1945. By inadvertence, however, no conveyances or assignments in favour of the contributories were executed before such dissolution. Accordingly, the properties vested under s. 296 in the Crown as *bona vacantia*. By this motion the liquidator and the contributories applied under s. 294 (1) of the Act to have the dissolution declared to be void. At the hearing the question arose whether an order under the section would, without any express vesting order, revest the properties in the company. Section 294 provides: "Where a company has been dissolved, the court may at any time within two years of the date of the dissolution, on an application being made for the purpose by the liquidator of the company, or by any other person who appears to the court to be interested, make an order, upon such terms as the court thinks fit, declaring the dissolution to have been void, and thereupon such proceedings may be taken as might have been taken if the company had not been dissolved."

VAISEY, J., said that he had been informed that, in one case, a vesting order as to property which had vested in the Crown under s. 296 had been made. The making of such an order was by no means frequent. He thought it would not be right for him to make such an order, as if it were the necessary or common thing to do. The court had power to declare "the dissolution to have been void." Those words meant that the court had power to make an effective declaration. If he made, as he intended to make, a declaration that the dissolution of D., Ltd. had been void, the result would be that the dissolution was void *ab initio* and all the consequences which flowed from the dissolution were avoided. He proposed to make an order following the words of the section declaring the dissolution to have been void, and he expressed the view that any property which was supposed to have vested in the Crown under s. 296 either in fact never did so vest, or, in so far as it must be assumed to have so vested, the vesting was avoided by his order.

COUNSEL: *Oliver Smith; H. O. Danckwerts.*

SOLICITORS: *Collyer-Bristow & Co.*, for *Grange & Wintringham*, Grimsby; *The Treasury Solicitor.*

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

KING'S BENCH DIVISION

Parker *v.* Boggon

Macnaghten, J. 9th December, 1946

Landlord and tenant—Covenant against sub-letting without lessor's consent—Proposed sub-lessee's diplomatic privilege—Consent withheld.

Action tried by Macnaghten, J.

The plaintiff, the executor of the tenant of a flat in London, sub-let it furnished to the defendant, who covenanted not to sub-let it without the previous consent of the tenant and the landlords, that consent not to be unreasonably withheld. The tenant having refused to consent to a sub-letting proposed by the sub-tenant, the latter appealed to the landlords, who said that they would give their consent if it were applied for by the tenant. The sub-tenant thereupon proceeded with his sub-letting. The tenant now sued the sub-tenant for possession for breach of covenant. The tenant's reason for refusing consent was that the proposed sub-letting was to an official of a foreign embassy who could claim diplomatic privilege and so be immune from proceedings for breach of covenant. It was contended for the tenant that it was reasonable to withhold his consent to the sub-letting because the sub-tenant could claim diplomatic privilege, and, in the event of such a tenant's entering into possession of the flat and committing breaches of covenant, the lessor would be unable to take any proceedings against him and would have no remedy. Reference was made to *Mills* v. *Cannon Brewery Co.* [1920] 2 Ch. 38, at p. 45, as establishing that the onus of proof of showing that, in refusing consent, the landlord had acted unreasonably, was on the person wishing to sub-let. It was argued for the sub-tenant that, in practice, no difficulty could ever arise owing to the refusal of an official of a foreign power to give up possession of premises, for pressure could be applied through his Embassy, which pressure would inevitably be effective; and that possession of diplomatic status was, therefore, no good reason for refusing consent to a sub-letting.

MACNAGHTEN, J., said that to some it might appear an advantage rather than a disadvantage that a tenant was entitled to diplomatic privilege, for such a person would presumably be able to discharge his obligations, and, if he personally did not discharge them, his Government behind him would feel bound to discharge them. In his (his lordship's) opinion, therefore, it was not reasonable to refuse consent to sub-let on the ground that the proposed sub-tenant was entitled to diplomatic privilege. The action must be dismissed.

COUNSEL: *Havers*, K.C., and *Ahern; Pennycuick.*

SOLICITORS: *Scott & Co.; Norden & Co.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Short Brothers (Rochester and Bedford), Ltd. *v.* Treasury Commissioners

Morris, J. 19th December, 1946

Emergency legislation—Company taken over by Government—Valuation of shares—Defence (General) Regulations, 1939 (*S.R. & O.*, 1939, *No.* 927), *reg.* 78.

Special case stated by an arbitrator.

In 1943 the Government decided to take over the business of the respondent company, and by a Treasury Order dated 31st May, 1943, ordered that the price to be paid for the ordinary and "A" ordinary shares should be 29s. 3d. a share. The shareholders claimed under reg. 78 (7) of the Defence (General) Regulations, 1939, that the value of their shares should be determined by arbitration. By reg. 78 (5) the price to be paid by a competent authority in respect of any shares transferred by virtue of a Treasury Order as referred to above should be a price which, in the opinion of the Treasury, was not less than the value of the shares as between a willing buyer and a willing seller. Before the arbitrator the shareholders contended that the price of their shares should be fixed by first ascertaining the value of the undertaking as a whole and then determining the proportionate value of the separate classes of shares and of individual shares within each class. On that basis they claimed a sum of 41s. 9d. a share. The Treasury contended that the correct method of valuation was to take the prices of the shares ruling on the Stock Exchange at the date of the transfer, and that the price should be 29s. 3d. a share. The arbitrator left to the court the question which method of valuation was correct. (*Cur. adv. vult.*)

MORRIS, J., said that, once the competent authority were satisfied that it was necessary to take control of the company, they could acquire the whole of the company's shares. There was no power to buy only a part of the shares. The shareholders contended that the authority were really empowered to acquire the whole undertaking, and that they ought therefore to pay the value of the undertaking as a whole. True, the value of the shares when all concentrated in one ownership might be greater than the sum of their value as individual holdings, but each shareholder, when compulsorily divested of his shares, lost the rights to which his particular shares entitled him; he lost the value of the shares which he actually held, not some aliquot part of the value of the company as a whole. On the true construction of the regulation, he thought that the question must be answered by upholding the contention of the Treasury Commissioners.

COUNSEL: *Radcliffe*, K.C., and *H. L. Parker; Sir David Maxwell Fyfe*, K.C., and *Cecil Turner.*

SOLICITORS: *Treasury Solicitor; William Charles Crocker.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Knowler *v.* Rennison

Lord Goddard, C.J., Humphreys and Lewis, JJ.
31st January, 1947

Road traffic—Uninsured user of motor vehicle—Disqualification from holding driving licence—"Special reason" for not imposing—Road Traffic Act, 1930 (20 & 21 *Geo.* 5, *c.* 43), *s.* 35.

Case stated by Parts of Lindsey Quarter Sessions.

The respondent, the owner of a motor-cycle, permitted a friend to drive the machine, he himself riding as a pillion passenger. The friend had owned a motor-cycle, and he and the respondent were accustomed to ride to work together on one or other of their cycles. The friend had sold his cycle a few days before the day of the offence, and quarter sessions accepted the respondent's evidence that he knew that his friend was looking out for another machine and believed that he had therefore kept his policy in force. The respondent's policy covered him while driving his own or any other cycle, but not a person other than himself who might drive the insured cycle. The respondent gave no grounds for his belief that his friend was going to buy another cycle and had kept his policy in force. Quarter sessions found, however, that the respondent had acted under a misapprehension as to his legal position relating to insurance, and that he honestly believed

that the user of the cycle was covered either by his or his friend's policy; and they held that that belief constituted a special reason for not imposing disqualification. They accordingly allowed his appeal from so much of the decision of petty sessions as disqualified him from holding a driving licence for twelve months on his conviction of contravening s. 35 of the Road Traffic Act, 1930, by causing the motor-cycle to be used on a road without there being in respect of that user of the machine a policy of insurance complying with the Act. The prosecutor now appealed. (*Cur. adv. vult.*)

LORD GODDARD, C.J., delivering the written judgment of the court, said that in *Whittall* v. *Kirby* (1946), 62 T.L.R. 696; 90 SOL. J. 571, that court had considered the question of disqualification for an offence against s. 15 of the Act of 1930, and had given no final decision on s. 35, though it was clear from the judgment in that case that many, if not all, of the considerations which should influence the court in deciding on the present matter applied equally to both sections. Thus, the circumstances must be special to the offence and not to the offender, and, as indeed quarter sessions had held, financial hardship could not be taken into account. Could the fact that a man misapprehended the legal effect of his policy be a special reason? In the opinion of the court, it would be most dangerous so to hold. The obvious duty of the owner of a motor vehicle was to see that he was insured and to make himself acquainted with the contents of his policy. He was not obliged to have a motor vehicle; but if he did he must see that he had such a policy as the law required. If he neither informed himself of its provisions, nor obtained advice as to what it covered, he had no reasonable ground for believing that the policy covered something which it did not. Belief, however honest, could not be regarded as a special reason unless based on reasonable grounds. Possibly, if a man took the opinion of, say, an insurance agent as to what his policy covered, and received a wrong opinion, that might be considered a special reason; or, again, if the matter turned on some obscure phrase which led a person to believe himself covered when a court ultimately decided that he was not. They (their lordships) expressed no opinion on that. The plain fact here was that the respondent, having obtained the policy, never troubled to acquaint himself with its terms. The same reasoning applied to his belief that his friend still had a policy in force. As he had never even asked his friend a question on the matter, it was impossible to accept his belief as a special reason. The probability that the offender had learnt his lesson was, as quarter sessions had held, not a special reason; but it was a matter to be taken into account in considering, where there were special reasons, whether the court would exercise their discretion to refrain from disqualifying, for the court was not bound so to refrain even if the circumstances were as special as might well be imagined. There was no provision in the Road Traffic Acts permitting the court to refrain from disqualifying on the ground of exceptional hardship, and the decisions might now be said to be uniform throughout the United Kingdom that hardship was not a special reason for refraining from imposing disqualification. The appeal would be allowed, the disqualification to run from the date, 20th March, 1946, when it was imposed by petty sessions.

COUNSEL: *James MacMillan; R. C. Vaughan.*

SOLICITORS: *Sharpe, Pritchard & Co.*, for *Sergeant & Collins*, Scunthorpe; *Burton & Co.*, Lincoln.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

PARLIAMENTARY NEWS

HOUSE OF LORDS

Read First Time:—

AGRICULTURAL WAGES (REGULATION) BILL [H.C.]. [28th January.

PENSIONS (INCREASE) BILL [H.C.]. [28th January.

ROAD TRAFFIC (DRIVING LICENCES) BILL [H.C.]. [28th January.

Read Second Time:—

CHESHIRE AND LANCASHIRE COUNTY COUNCILS (RUNCORN-WIDNES BRIDGE, &c.) BILL [H.L.]. [28th January.

COMMERCIAL GAS BILL [H.L.]. [28th January.

DUDLEY CORPORATION BILL [H.L.]. [28th January.

HAVANT AND WATERLOO URBAN DISTRICT COUNCIL BILL [H.L.]. [28th January.

HOVE CORPORATION BILL [H.L.]. [28th January.

NAZEING WOOD OR PARK BILL [H.L.]. [28th January.

SOUTH METROPOLITAN GAS BILL [H.L.]. [28th January.

SOUTHEND-ON-SEA CORPORATION BILL [H.L.]. [28th January.

SOUTHERN RAILWAY BILL [H.L.]. [28th January.

SOUTH-WEST MIDDLESEX CREMATORIUM BILL [H.L.]. [28th January.

SUNDERLAND CORPORATION BILL [H.L.]. [28th January.

TENDRING HUNDRED WATER AND GAS BILL [H.L.]. [30th January.

Read Third Time:—

FORESTRY BILL [H.L.]. [28th January.

ISLE OF MAN HARBOURS BILL [H.L.]. [30th January.

In Committee:—

AIR NAVIGATION BILL [H.L.]. [30th January.

HOUSE OF COMMONS (REDISTRIBUTION OF SEATS) BILL [H.C.]. [28th January.

HOUSE OF COMMONS

Read First Time:—

APPELLATE JURISDICTION BILL [H.C.]. [28th January.

To authorise the appointment of additional Lords of Appeal in Ordinary.

POLISH RESETTLEMENT BILL [H.C.]. [31st January.

To provide for the application of the Royal Warrant as to pensions, etc., for the military forces to certain Polish forces, to enable the Assistance Board to meet the needs of, and to provide accommodation in camps or other establishments for, certain Poles and others associated with Polish forces, to provide for their requirements as respects health and educational services, to provide for making arrangements and meeting expenses in connection with their emigration, to modify as respects the Polish resettlement forces and past members of certain Polish forces provisions relating to the service of aliens in the forces of the Crown, and for purposes connected therewith and consequential thereon.

Read Second Time:—

AGRICULTURE BILL [H.C.]. [28th January.

TOWN AND COUNTRY PLANNING BILL [H.C.]. [30th January.

Read Third Time:—

MALTA (RECONSTRUCTION) BILL [H.C.]. [31st January.

QUESTIONS TO MINISTERS

PROCEEDINGS AGAINST CROWN

Mr. S. SILVERMAN asked the Attorney-General what remedy is now open to employees in royal ordnance factories who are injured in circumstances which would give them a right to damages at common law against private employers.

The ATTORNEY-GENERAL: I would refer my hon. friend to the reply given to the hon. member for Barnard Castle (Mr. Lavers) on 21st November last. As then stated, where the alleged injury is caused by the wrongful act of a servant of the Crown, that servant may be sued and all proper facilities will be given to the claimant to enable him to identify the wrongdoer and to institute proceedings. In any case where this procedure is inappropriate, the Crown will be prepared to submit the claim to arbitration in such a way as to ensure that it can be adjudicated upon on its merits. As has already been stated, it is hoped to introduce legislation dealing with proceedings as soon as Parliamentary time is available. [27th January.

MINERAL OWNERSHIP

Mr. T. REID asked the Secretary of State for the Colonies, in what Colonies minerals in the soil are the property of freehold owners of land.

Mr. CREECH JONES: In the majority of Colonial territories minerals are vested in the Crown, except to the extent that before the passing of the vesting ordinance the alienation of the surface expressly carried with it the ownership of any minerals in the land. The position is therefore of some complexity, but I will send my hon. friend a note of the legal position. He is no doubt aware that I have recently asked Colonial Governments to consider the adoption of vesting legislation where it has not so far been enacted and to assess the balance of advantage in recovering rights already passed into private hands. [29th January.

LAND TENURE (FIJI)

Mr. T REID asked the Secretary of State for the Colonies what results in land administration were secured by Ordinance 12 of 1940 in Fiji; and if the system therein embodied of developing principles of land tenure by means of a permanent board with local advisory committees has yielded better results than recurrent legislation and case law decisions in the courts.

Mr CREECH JONES: This ordinance is achieving, in large measure, its objects of protecting the interests of native land-owners, ending wasteful alienation, preserving forests and soil fertility, and providing land for settlement; and I understand that the machinery set up by it has yielded better results than previous legislation affecting land tenure. [29th January.

MAGISTRATES' COURTS (EVENING SITTINGS)

Mr. GARRY ALLIGHAN asked the Secretary of State for the Home Department to what extent regulations of his Department prevent magistrates' courts being held during evening hours; and if he will draw attention to the desirability of evening sittings.

Mr. EDE: It is for the justices in each division to arrange at what times they will sit, and there are no Home Office Regulations to hinder evening sittings. On the contrary, I should be glad to see further use made of the power to arrange such sittings in places where they would suit local convenience.

Mr. JANNER: Would the right hon. gentleman circularise magistrates to that effect, because it is a very important matter, and such a change would give considerable facilities to people who cannot otherwise appear in court?

Mr. EDE: I hope that the publicity given to this matter by the question and answer will suffice. They will presumably be reported in the law journals, and my experience is that magistrates rather resent receiving circulars dealing with the arrangement of their own private business. [30th January.

MOTORING OFFENCES (APPEALS)

Lieut.-Colonel HAMILTON asked the Secretary of State for the Home Department, in the last twelve months for which figures are available, how many appeals have been made to London Sessions by motorists sentenced to imprisonment for driving while under the influence of drink or drugs; in how many of these cases was a fine substituted for imprisonment; in how many cases was the term of imprisonment increased; and in how many was the sentence confirmed.

Mr. EDE: The number of such appeals in 1946 was seven; in three a fine was substituted, and in four the sentence of imprisonment was confirmed; in none was the term of imprisonment increased. [30th January.

POLICE COURT CASE (CAERPHILLY)

Sir C. EDWARDS asked the Secretary of State for the Home Department if he is aware that Mr. J. H. Gadd, Coed-y-Vedw, Machen, Monmouthshire, was summoned to appear at the Caerphilly police court to answer a charge of using a motor lorry in an unfit state on the road; that the summons stated the case was to be heard on Tuesday, 26th November, 1946; that on the 25th he was informed that the case would be adjourned and no other date was fixed; that the case was heard on 31st December, 1946, and fines imposed totalling £8; that neither the defendant nor any representative was present as he had not been informed that it was to be heard and, consequently, no defence was put up; and if he will consider remitting these fines.

Mr. EDE: I had not previously been aware of this case. I am having inquiries made and will consider the matter further when these inquiries are completed. [30th January.

RULES AND ORDERS

AT THE COURT AT BUCKINGHAM PALACE

The 29th day of January, 1947

Present

THE KING'S MOST EXCELLENT MAJESTY IN COUNCIL

Whereas by the Order in Council of the 14th day of May, 1912,* as amended by divers subsequent Orders in Council, certain arrangements were made with reference to the Commission Days on the respective Circuits, and the taking of civil and criminal business at certain Assize towns, and in particular it was provided that civil as well as criminal business should be taken at all the Assize towns on the Winter and Summer Circuits but only at certain specified Assize towns on the Autumn Circuit:

And whereas it is provided by the said Order that the Lord Chief Justice may from time to time, with the sanction of the Lord Chancellor, direct that civil as well as criminal business shall be taken at any Assize town on the Autumn Circuit in addition to the towns specified as aforesaid:

And whereas it is expedient that provision should be made for varying as circumstances may from time to time require the arrangements for taking civil business at Assize towns on the Winter, Summer and Autumn Circuits:

And whereas the provisions of the Rules Publication Act, 1893, have been complied with:

Now, therefore, His Majesty, by and with the advice of His Privy Council, is pleased to order, and it is hereby ordered, as follows:—

1. The Order in Council of the fourteenth day of May, 1912 shall have effect as though there were substituted for paragraph (*c*) of that Order the following paragraph:—

"(*c*) It shall be lawful for the Lord Chief Justice from time to time, by order made with the sanction of the Lord Chancellor, to direct that at any town or towns on the Winter, Summer or Autumn Circuits—

(i) Civil business shall be taken as well as criminal business; or

(ii) Civil business shall not be taken; or

(iii) Civil business shall only be taken at the Assizes specified in the Order;

and any direction so given as respects civil business at any town or towns may specify a particular cause or class of causes to be taken thereat or may provide for the taking of civil business generally."

2. This Order may be cited as the Circuits (Civil Business) Order, 1947.

E. C. E. Leadbitter.

* S.R. & O., 1912 (No. 537) p. 1186.

RECENT LEGISLATION

STATUTORY RULES AND ORDERS, 1947

No. 99. **Airways Corporations Stock** Regulations. January 15.

No. 103. **Coal Industry Nationalisation** (Options and Constitution of Compensation Units) Regulations. January 20.

No. 151. **Defence.** Order in Council revoking Regulation 58AAA of the Defence (General) Regulations, 1939. January 29.

No. 98. **Evacuated Areas** (Termination) Order. January 20

TREASURY

High Court and Court of Appeal. Account of Receipts and Expenditure in 1945–46.

[Any of the above may be obtained from the Publishing Department S.L.S.S., Ltd., 88/90, Chancery Lane, London, W.C.2.]

NOTES AND NEWS

Honours and Appointments

The Lord Chancellor has made the following appointments, with effect from 1st February, 1947:—

Mr. JOHN FREDERICK BEATY has been appointed Registrar of the Carlisle, Haltwhistle and Wigton County Courts and District Registrar in the District Registry of the High Court of Justice in Carlisle. He was admitted in 1939.

Mr. ARNOLD DESQUESNES has been appointed Registrar of the Coventry, Banbury and Chipping Norton County Courts and District Registrar in the District Registry of the High Court of Justice in Coventry.

Mr. CHRISTOPHER FAIRER has been appointed Registrar of the Penrith and Appleby County Courts. He was admitted in 1923.

Mr. IVAN KENNETH FRASER, Registrar of the Southwark, Woolwich and Dartford County Courts, is to be in addition the Registrar of the Barnet County Court.

Mr. CHARLES EARNSHAW WOOSNAM has been appointed Registrar of the Hanley and Stoke-upon-Trent, Leek, Newcastle-under-Lyme, Stone and Uttoxeter County Courts and District Registrar in the District Registry of the High Court of Justice in Hanley.

Mr. J. F. EASTWOOD, K.C., Metropolitan Magistrate, who sits at Woolwich, has been appointed to Bow Street Court in succession to Mr. Harold McKenna, whose death occurred recently. Bow Street will now have four magistrates to preside over the three courts.

Mr. WILLIAM HIRST, LL.B., Assistant Solicitor, Colne Corporation, has been appointed Senior Assistant Solicitor to the Carlisle Corporation. He was admitted in 1938.

Mr. M. L. BERRYMAN, K.C., has been appointed Recorder of Dover in succession to Sir Archibald Bodkin, who has resigned.

Mr. FRANCIS BIDDLE and Mr. JOHN J. PARKER have been elected Honorary Masters of the Bench of the Inner Temple.

Notes

Arrangements are being made for Tower Bridge Court to sit six days a week instead of four. This will require the appointment of an additional magistrate.

At an ordinary general meeting of the Royal Institution of Chartered Surveyors, to be held on Monday, 17th February, 1947, at 5.30 p.m., the Minister of Town and Country Planning (the Rt. Hon. Lewis Silkin, M.P.) will address members of the Institution on the provisions of the Town and Country Planning Bill.

At the annual meeting of the Solicitors' Benevolent Association, in Dublin, the annual report was adopted. This showed subscriptions of £673 and investment income of £1,107, a decrease under each head. Life subscriptions, donations and legacies were up, the total being £1,849. The relief granted was £1,285, which, while well above the average, was slightly less than last year.

UNITED LAW SOCIETY

A meeting of the United Law Society was held in the Barristers' Refreshment Room, Lincoln's Inn, on Monday, 27th January. Mr. O. T. Hill was in the chair. Mr. C. Hardinge Pritchard proposed "That the property qualification of jurors in (A) criminal cases, (B) civil cases, should be abolished." Mr. J. G. Ormerod opposed. There also spoke: Messrs. J. L. E. Arnold, G. C. Raffety, J. Bracewell, G. Smith, Miss F. L. Berman and Mr. O. T. Hill. The chairman exercised his casting vote in favour of the motion.

Meetings of the United Law Society will be held every Monday in February, at the Barristers' Refreshment Room, Lincoln's Inn, at 8 p.m. Subjects for debate are: 10th—"That courts martial procedure needs radical reform": 17th—"That this House approves the general principles of the Town and Country Planning Bill, 1947": 24th—Impromptu debate

LAW STUDENTS' DEBATING SOCIETY

At a meeting of the Law Students' Debating Society, held at The Law Society's Court Room, on Tuesday, 14th January (chairman Mr. H. F. MacMaster), the subject for debate was: "That the case of *Rees* v. *Hughes* [1946] K.B. 517 was wrongly decided." Mr. J. M. Shaw opened in the affirmative. Miss Ruth Eldridge opened in the negative. Mr. R. Watson seconded in the affirmative. Mr. J. McL. Ritchie seconded in the negative. The following also spoke: Messrs. J. E. Terry, F. D. Kennedy, B. Greenby, M. C. Batten, A. C. Goodall and A. E. Hogan-Fleming. The opener having replied, the motion was lost by nine votes. There were twenty-two members and four visitors present.

On Tuesday, 21st January (chairman Miss Ruth Eldridge), the subject for debate was: "That this House advocates the immediate establishment of a United States of Europe." Mr. E. C. Jones opened in the affirmative. Mr. D. Croom-Johnson opened in the negative. The following also spoke: Messrs. A. Rhys-Williams, W. D. S. Chesters, L. E. Long, W. Murdock, C. Barry, L. Wingfield, J. A. D. Campbell, E. D. Syson, R. Watson, H. H. Marens, G. Thomas, F. D. Kennedy and J. E. Terry. The opener having replied, the motion was lost by three votes. There were twenty-five members and three visitors present.

Meetings of the Law Students' Debating Society will be held every Tuesday in February at The Law Society's Court Room, at 7.30 p.m. Subjects for debate are: 11th—"That the case of *Rex* v. *Sims* [1946] K.B. 531 was wrongly decided"; 18th—"That a claim by women for equal pay with men is without justification"; 25th—"That the case of *Southern Foundries* (1926), *Ltd.* v. *Shirlaw* [1940] A.C. 701, was wrongly decided."

SOLICITORS' MANAGING CLERKS' ASSOCIATION

Under the auspices of the Solicitors' Managing Clerks' Association a series of three lectures on the Rent Restrictions Acts will be delivered by Mr. T. Elder Jones, M.A. (Oxon), Barrister-at-Law, at The Old Hall, Lincoln's Inn, W.C.2, at 6.15 p.m., on Wednesdays the 12th, 19th and 26th February, 1947. Tickets of admission may be obtained on application to the Honorary Secretary, Maltravers House, Arundel Street, Strand, W.C.2.

COURT PAPERS

SUPREME COURT OF JUDICATURE

HILARY SITTINGS, 1947

COURT OF APPEAL AND HIGH COURT OF JUSTICE—CHANCERY DIVISION

ROTA OF REGISTRARS IN ATTENDANCE ON

Date.	Emergency Rota	Appeal Court I	Mr. Justice Vaisey
Mon., Feb. 10	Mr. Farr	Mr. Reader	Mr. Hay
Tues., ,, 11	Blaker	Hay	Farr
Wed., ,, 12	Andrews	Farr	Blaker
Thurs., ,, 13	Jones	Blaker	Andrews
Fri., ,, 14	Reader	Andrews	Jones
Sat., ,, 15	Hay	Jones	Reader

	Group A		Group B	
Date.	Mr. Justice Roxburgh *Non-Witness.*	Mr. Justice Wynn-Parry *Witness.*	Mr. Justice Evershed *Witness.*	Mr. Justice Romer *Non-Witness.*
Mon., Feb. 10	Mr. Jones	Mr. Andrews	Mr. Farr	Mr. Blaker
Tues., ,, 11	Reader	Jones	Blaker	Andrews
Wed., ,, 12	Hay	Reader	Andrews	Jones
Thurs., ,, 13	Farr	Hay	Jones	Reader
Fri., ,, 14	Blaker	Farr	Reader	Hay
Sat., ,, 15	Andrews	Blaker	Hay	Farr

STOCK EXCHANGE PRICES OF CERTAIN TRUSTEE SECURITIES

Bank Rate (26th October, 1939) 2%

	Div. Months	Middle Price Feb. 3 1947	Flat Interest Yield	‡ Approximate Yield with redemption
British Government Securities			£ s. d.	£ s. d.
Consols 4% 1957 or after	FA	117¼	3 8 3	1 19 6
Consols 2½%	JAJO	98½	2 10 9	—
War Loan 3% 1955–59	AO	109¾	2 14 8	1 13 2
War Loan 3½% 1952 or after	JD	108¾	3 4 4	1 18 6
Funding 4% Loan 1960–90	MN	122¼	3 5 5	2 0 5
Funding 3% Loan 1959–69	AO	109¾	2 14 8	2 1 1
Funding 2¾% Loan 1952–57	JD	106	2 11 11	1 11 6
Funding 2½% Loan 1956–61	AO	105¾	2 7 3	1 15 8
Victory 4% Loan Av. life 18 years	MS	122¾	3 5 2	2 8 5
Conversion 3½% Loan 1961 or after	AO	115½	3 0 7	2 4 0
National Defence Loan 3% 1954–58	JJ	108½	2 15 5	1 12 3
National War Bonds 2½% 1952–54	MS	104¼	2 7 11	1 14 1
Savings Bonds 3% 1955–65	FA	108¼	2 15 5	1 17 4
Savings Bonds 3% 1960–70	MS	109	2 15 1	2 4 9
Treasury 2½%	AO	99½	2 10 3	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	101	2 19 5	—
Guaranteed 2¾% Stock (Irish Land Act, 1903)	JJ	101	2 14 5	—
Redemption 3% 1986–96	AO	116¾	2 11 4	2 6 9
Sudan 4½% 1939–73 Av. life 16 years	FA	124	3 12 7	2 12 10
Sudan 4% 1974 Red. in part after 1950	MN	118	3 7 10	—
Tanganyika 4% Guaranteed 1951–71	FA	107	3 14 9	2 2 6
Lon. Elec. T.F. Corp. 2½% 1950–55	FA	101½	2 9 3	2 0 0
Colonial Securities				
*Australia (Commonw'h) 4% 1955–70	JJ	114	3 10 2	2 3 5
Australia (Commonw'h) 3½% 1964–74	JJ	112	2 18 0	2 7 6
*Australia (Commonw'h) 3% 1955–58	AO	106	2 16 7	2 4 2
†Nigeria 4% 1963	AO	124	3 4 6	2 5 7
*Queensland 3½% 1950–70	JJ	104	3 7 4	2 2 6
Southern Rhodesia 3½% 1961–66	JJ	115	3 0 10	2 4 10
Trinidad 3% 1965–70	AO	112	2 13 7	2 4 5
Corporation Stocks				
*Birmingham 3% 1947 or after	JJ	101½	2 19 1	—
*Leeds 3¼% 1958–62	JJ	109	2 19 8	2 6 1
*Liverpool 3% 1954–64	MN	105½	2 16 10	2 2 8
Liverpool 3½% Red'mable by agreement with holders or by purchase	JAJO	130	2 13 10	—
London County 3% Con. Stock after 1920 at option of Corporation	MSJD	101½xd	2 19 1	—
*London County 3½% 1954–59	FA	110	3 3 8	2 0 11
*Manchester 3% 1941 or after	FA	101½	2 19 1	—
*Manchester 3% 1958–63	AO	108	2 15 7	2 4 5
Met. Water Board "A" 1963–2003	AO	109	2 15 1	2 6 2
* Do. do. 3% "B" 1934–2003	MS	101xd	2 19 5	—
* Do. do. 3% "E" 1953–73	JJ	105	2 17 2	2 2 1
Middlesex C.C. 3% 1961–66	MS	108xd	2 15 7	2 6 6
*Newcastle 3% Consolidated 1957	MS	106xd	2 16 7	2 7 5
Nottingham 3% Irredeemable	MN	112	2 13 7	—
Sheffield Corporation 3½% 1968	JJ	118	2 19 4	2 8 0
Railway Debenture and Preference Stocks				
Gt. Western Rly. 4% Debenture	JJ	124½	3 4 3	—
Gt. Western Rly. 4½% Debenture	JJ	125½	3 11 9	—
Gt. Western Rly. 5% Debenture	JJ	136½	3 13 3	—
Gt. Western Rly. 5% Rent Charge	FA	134½	3 14 4	—
Gt. Western Rly. 5% Cons. G'rteed.	MA	132½	3 15 6	—
Gt. Western Rly. 5% Preference	MA	121½	4 2 4	—

* Not available to Trustees over par.

† Not available to Trustees over 115.

‡ In the case of Stocks at a premium, the yield with redemption has been calculated the earliest date; in the case of other Stocks, as at the latest date.

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